

SUMMARIZED

RECORD OF TRIAL

(and accompanying papers)

of

Gary P. Pittman
(Name Last, First, Middle Initial)

(b)(6)
(Social Security Number)

Sergeant
(Rank)

HqBn, 1st MarDiv
(Unit Command Name)

USMC
(Branch of Service)

Camp Pendleton, CA
(Station or Ship)

By

GENERAL COURT-MARTIAL

Convened by

Commanding General
(Title of Convening Authority)

Marine Corps Base
(Unit/Command of Convening Authority)

Tried at

Camp Pendleton, California,
(Place or Places of Trial)

on

29 Apr; 28 Jun; 8, 28
Jul; 9, 19, 23, 27, 30, 31
Aug, 1-3 Sept 2004

ACTION OF JUDGE ADVOCATE OR GENERAL COURT-MARTIAL CONVENING AUTHORITY(SPCM)/JAG(GCM)
RCM 1111 and 1112, MCM, 1984)

UNIT COMMAND NAME		LOCATION OF JUDGE ADVOCATE OR GENERAL COURT MARTIAL CONVENING AUTHORITY JAG	DATE RECORD RECEIVED
ACTION		DATE	REMARKS
FINAL DISPOSITION: Findings and sentence, as approved by convening authority, correct in law and fact; to file			
OR Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file			
Acquittal or sentence set aside (see remarks), to file			
COPIES OF CMO DISPOSED OF IN ACCORDANCE WITH DEPARTMENT REGULATIONS			
JUDGE ADVOCATE OR LAW SPECIALIST			
SIGNATURE		RANK	DATE SIGNED

Front Cover



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
MARINE CORPS BASE
BOX 555023
CAMP PENDLETON, CALIFORNIA 92055-5023

IN REPLY REFER TO:
5800
SJA

APR 09 2004

From: Staff Judge Advocate
To: Commanding General

Subj: PRETRIAL ADVICE IN THE CASE OF U.S. V. SERGEANT GARY P. PITTMAN USMCR

Ref: (a) Memorandum of Agreement of Feb 04
(b) Article 32, UCMJ
(c) Article 34, UCMJ
(d) R.C.M. 406, MCM (2002 Ed.)
(e) JAGMAN

Encl: (1) DD Form 458 (Charge Sheet) preferred 16 Oct 03
(2) DD Form 458 (Add Charge Sheet) preferred 6 Apr 04
(3) CG, 1stMarDiv (Rein) ltr 5813 LSST-E of 20 Oct 03
(4) IO rpt dtd 1 Mar 04 w/ exhibits

1. Sergeant Pittman, the accused, is a member of Headquarters Battalion, 1st Marine Division (Rein). The charges against the accused are contained in enclosures (1) and (2). Enclosure (3) contains the order of the Commanding General, 1st Marine Division (Rein), directing an Article 32, UCMJ, pretrial investigation into the charges and specifications contained in enclosure (1). The investigation was conducted by Colonel W. V. Gallo, USMCR, on 26-30 January and 2 February 2004, and the results are contained in enclosure (4).

2. Due to the deployment of his unit, the Commanding General, 1st Marine Division (Rein), has asked that you take action on this case pursuant to the terms of the Memorandum of Agreement, reference (a).

3. Analysis of Charges. The accused is charged in enclosure (1) with the following violations of the Uniform Code of Military Justice (UCMJ): two specifications of dereliction of duty, in violation of Article 92, UCMJ; and, five specifications of assault, in violation of Article 128, UCMJ. In enclosure (2), the accused is charged with one specification of unlawfully striking (b)(6) by kicking him, in violation of Article 128, UCMJ. Evidence on the additional charge in enclosure (2) was raised during the course of the Article 32, UCMJ, pretrial investigation.

4. Sufficiency of the Charges and Specifications. I have reviewed the charges contained in enclosures (1) and (2). Per references (b) through (e), my advice is that:

a. Each specification alleges an offense under the Uniform Code of Military Justice.

Subj: PRETRIAL ADVICE IN THE CASE OF U.S. V. SERGEANT GARY P. PITTMAN USMCR

b. The charges and specifications have been investigated pursuant to reference (b).

c. A court-martial would have jurisdiction over the accused and each offense alleged.

5. Recommended disposition of the Charges and Specifications:

a. The Investigating Officer found probable cause exists for the offenses in Charge I, Specifications 1 and 2; Charge II, Specifications 1 and 2; and, Charge III, Specifications 1 and 2; and recommends that they be referred to trial by special court martial. See enclosure (3).

b. I recommend that Charge I, Specifications 1 and 2; Charge II, Specifications 1 and 2; Charge III, Specifications 1, 2, and 3; and the Additional Charge be referred to trial by general court-martial and that Specifications 4 and 5 of Charge III be withdrawn and dismissed without prejudice.

6. Action. If you concur with my recommendation for trial by general court-martial, you may refer the charges to a general court-martial by signing the referral block of the charge sheet at enclosures (1) and (2). If you approve the recommendation that Specifications 4 and 5 of Charge III be withdrawn and dismissed without prejudice, please indicate by initialing below, and I will take clerical steps to dismiss those allegations.

a. **Approve** withdrawal and dismissal of Specifications 4 and 5 of Charge III. W.D.

b. **Disapprove** withdrawal and dismissal of Specifications 4 and 5 of Charge III. _____

W.D. Durrett Jr.
W. D. DURRETT, JR.

INVESTIGATING OFFICER'S REPORT

(Of Charges Under Article 32, UCMJ and R.C.M. 405, Manual for Courts-Martial)

1a. FROM: (Name of Investigating Officer - Last, First, MI) GALLO, William V.		b. GRADE Colonel (O-6)	c. ORGANIZATION I Marine Augmentation Command Element (MACE) I Marine Expeditionary Force (MEF) Camp Pendleton, CA 92055	d. DATE OF REPORT 1 March 2004
2a. TO: (Name of Officer who directed the investigation - Last, First, MI) (b)(6)3		b. TITLE Commanding General	c. ORGANIZATION First Marine Division Camp Pendleton, CA 92055	
3a. NAME OF ACCUSED (Last, First, MI) PITTMAN, Gary P.	b. GRADE Sergeant (E-5)	c. SSN (b)(6)	d. ORGANIZATION Headquarters Battalion 1st Marine Division Camp Pendleton, CA 92055	e. DATE OF CHARGES 16 October 2003

(Check appropriate answer)

4. IN ACCORDANCE WITH ARTICLE 32, UCMJ, AND R.C.M. 405, MANUAL FOR COURTS-MARTIAL, I HAVE INVESTIGATED THE CHARGES APPENDED HERETO (Exhibit 1)	YES	NO
5. THE ACCUSED WAS REPRESENTED BY COUNSEL (If not, see 9 below)	X	
6. COUNSEL WHO REPRESENTED THE ACCUSED WAS QUALIFIED UNDER R.C.M. 405(d) (2), 502(d)	X	
7a. NAME OF DEFENSE COUNSEL (Last, First, MI) FOLK, William A.	b. GRADE 1st Lt (O-2)	8a. NAME OF ASSISTANT DEFENSE COUNSEL (If any) N/A
c. ORGANIZATION (If appropriate) Legal Service Support Section 1st Force Service Support Group Camp Pendleton, CA 92055		b. GRADE
d. ADDRESS (If appropriate)		d. ADDRESS (If appropriate)

9. (To be signed by accused if accused waives counsel. If accused does not sign, investigating officer will explain in detail in Item 21.)

a. PLACE	b. DATE
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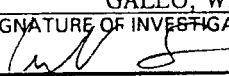
I HAVE BEEN INFORMED OF MY RIGHT TO BE REPRESENTED IN THIS INVESTIGATION BY COUNSEL, INCLUDING MY RIGHT TO CIVILIAN OR MILITARY COUNSEL OF MY CHOICE IF REASONABLY AVAILABLE. I WAIVE MY RIGHT TO COUNSEL IN THIS INVESTIGATION.

10. SIGNATURE OF ACCUSED

10. AT THE BEGINNING OF THE INVESTIGATION I INFORMED THE ACCUSED OF: (Check appropriate answer)	YES	NO
1. THE CHARGE(S) UNDER INVESTIGATION	X	
2. THE IDENTITY OF THE ACCUSER	X	
3. THE RIGHT AGAINST SELF-INCRIMINATION UNDER ARTICLE 31	X	
4. THE PURPOSE OF THE INVESTIGATION	X	
5. THE RIGHT TO BE PRESENT THROUGHOUT THE TAKING OF EVIDENCE	X	
6. THE WITNESSES AND OTHER EVIDENCE KNOWN TO ME WHICH I EXPECTED TO PRESENT	X	
7. THE RIGHT TO CROSS-EXAMINE WITNESSES	X	
8. THE RIGHT TO HAVE AVAILABLE WITNESSES AND EVIDENCE PRESENTED	X	
9. THE RIGHT TO PRESENT ANYTHING IN DEFENSE, EXTENUATION, OR MITIGATION	X	
10. THE RIGHT TO MAKE A SWORN OR UNSWORN STATEMENT, ORALLY OR IN WRITING	X	
11a. THE ACCUSED AND ACCUSED'S COUNSEL WERE PRESENT THROUGHOUT THE PRESENTATION OF EVIDENCE (If the accused or counsel were absent during any part of the presentation of evidence, complete b below.)	X	

STATE THE CIRCUMSTANCES AND DESCRIBE THE PROCEEDINGS CONDUCTED IN THE ABSENCE OF ACCUSED OR COUNSEL

NOTE: If additional space is required for any item, enter the additional material in Item 21 or on a separate sheet. Identify such material with the proper numerical and, if appropriate, lettered heading (Example: "7c.") Securely attach any additional sheets to the form and add a note in the appropriate item of the form: "See additional sheet."

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
(b)(6)	SSgt (E-6) USMCR	2nd Battalion, 25th Marine Regiment	X	
	Major (O-4) USMCR	Marine Air Control Group 28 MCAS, Cherry Pt, NC	X	
	LtCol (O-5)USMCR	2nd Battalion, 25th Marine Regiment	X	
	LTCOL (O-5) USA	Armed Forces Regional Medical Examiner Landstuhl, Germany	X	
	Medical Doctor Civilian	Houston, TX	X	
See attached sheet for additional witnesses				
b. THE SUBSTANCE OF THE TESTIMONY OF THESE WITNESSES HAS BEEN REDUCED TO WRITING AND IS ATTACHED.				
13a. THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
Geneva Convention/Treatment of PoWs	Attached as Investigating Officer (IO) Exhibit 1		X	
2/25 ROE Card	Attached as IO 2		X	
2/25 Combat SOP	Attached as IO 3		X	
DoD Directive 2310.1	Attached as IO 4		X	
FM 34-52	Attached as IO 5		X	
See attached sheet for additional items				
b. EACH ITEM CONSIDERED, OR A COPY OR RECITAL OF THE SUBSTANCE OR NATURE THEREOF, IS ATTACHED			X	
14. THERE ARE GROUNDS TO BELIEVE THAT THE ACCUSED WAS NOT MENTALLY RESPONSIBLE FOR THE OFFENSE(S) OR NOT COMPETENT TO PARTICIPATE IN THE DEFENSE. (See R.C.M. 909, 916(k).)				X
15. THE DEFENSE DID REQUEST OBJECTIONS TO BE NOTED IN THIS REPORT (If Yes, specify in Item 21 below.)			X	
16. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL				X
17. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM				X
18. REASONABLE GROUNDS EXIST TO BELIEVE THAT THE ACCUSED COMMITTED THE OFFENSE(S) ALLEGED			X	X
19. I AM NOT AWARE OF ANY GROUNDS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. (See R.C.M. 405(d) (1).)			X	
20. I RECOMMEND:				
a. TRIAL BY <input type="checkbox"/> SUMMARY <input checked="" type="checkbox"/> SPECIAL <input type="checkbox"/> GENERAL COURT-MARTIAL				
b. <input type="checkbox"/> OTHER (Specify in Item 21 below)				
21. REMARKS (Include, as necessary, explanation for any delays in the investigation, and explanation for any "no" answers above.)				
Block 14. So there is no confusion, I believe the accused was responsible for his conduct which forms the basis for the alleged offenses and competent to participate in his defense.				
Block 15. Defense-requested objections are noted in the attached sheet.				
Block 16. The (b)(6) are unlikely to be available in the event of a trial.				
Blocks 17-18 and 20. The attached sheet discusses in detail the form of the charges, whether reasonable grounds exist to believe the accused committed the offenses, and the appropriate forum for adjudication.				
Block 19. So there is no confusion, I am not aware of any grounds which would disqualify me.				
22a. TYPED NAME OF INVESTIGATING OFFICER			b. GRADE	c. ORGANIZATION
GALLO, William V.			Colonel (O-6)	1 MACE, 1 MEF, Camp Pendleton, CA 92005
d. SIGNATURE OF INVESTIGATING OFFICER			e. DATE	
			1 March 2004	

Block 12a.

12a. THE FOLLOWING WITNESSES TESTIFIED UNDER OATH: (Check appropriate answer)				
NAME (Last, First, MI)	GRADE (If any)	ORGANIZATION/ADDRESS (Whichever is appropriate)	YES	NO
(b)(6))	Special Agent	NCIS, NAS Pensacola, FL	X	
	LCdr (O-4) USNR	2 nd Battalion, 25 th Marine Regiment	X	
	Cdr (O-5) USNR	4 th Reconnaissance Battalion	X	
	Special Agent	NCIS, Naval Station, Great Lakes, IL	X	
	SSgt (E-6) USMC	2d Counter Intelligence Battalion Human Intelligence Company	X	
	Sgt (E-5) USMC	2d Counter Intelligence Battalion Human Intelligence Company	X	
	LCpl (E-3) USMCR	2 nd Battalion, 25 th Marine Regiment	X	
	Sgt (E-5) USMCR	2 nd Battalion, 25 th Marine Regiment	X	
	HM3 (E-4) USN	Naval Hospital, NAS Jacksonville, FL	X	
	LCpl (E-3) USMCR	2 nd Battalion, 25 th Marine Regiment		X
	LCpl (E-3) USMCR	2 nd Battalion, 25 th Marine Regiment		X
	PFC (E-2) USMCR	2 nd Battalion, 25 th Marine Regiment	X	

Block 13a.

All exhibits and statements listed below may be considered against all accuseds, except where specifically noted otherwise.

13.a THE FOLLOWING STATEMENTS, DOCUMENTS, OR MATTERS WERE CONSIDERED; THE ACCUSED WAS PERMITTED TO EXAMINE EACH.				
DESCRIPTION OF ITEM	LOCATION OF ORIGINAL (If not attached)			
Diagram of Camp Whitehorse Detention Facility	Marked as IO 6--In possession of Trial Counsel	X		
IO Exhibit 7 was not offered				
Photographs of Camp	Attached as IO 8	X		

Whitehorse Detention Facility			
Photographs of (b)(6) Body	Attached as IO 9	X	
Maj Paulus' Handwritten/Unsworn Statement of 6 June 2003	Attached as IO 10	X	
Maj Paulus' Combined Typed/Sworn and Handwritten/Unsworn Statement and Advisement of Rights of 13 June 2003	Attached as IO 11 and 11A	X	
Photographs of the Exhumation of (b)(6)	Attached as IO 12	X	
(b)(6) Handwritten/Unsworn Statement of 6 June 2003	Attached as IO 13 (Maj Paulus objected to the introduction of this Statement on the basis that it is unsworn—Statement may be considered only as to (b)(6) Pittman)	X	
(b)(6) Advisement of Rights and Typed/Sworn Statement of 16 June 2003	Attached as IO 14 (Inadmissible against (b)(6) Article 31 rights but may be considered against Maj Paulus and Sgt Pittman)	X	
(b)(6) Handwritten/Unsworn Statement of 6 June 2003	Attached as IO 15 (Maj Paulus and LCpl (b)(6) objected to the introduction of this Statement on the basis that it is unsworn—Statement may be considered only as to Sgt Pittman)	X	
PFC (then LCpl) (b)(6) Handwritten/Sworn Statement of 17 June 2003	Attached as IO 16 (Maj Paulus and LCpl (b)(6) objected to the introduction of this Statement on the basis that it is unsworn—Statement may be considered only as to Sgt Pittman)	X	
PFC (then LCpl) (b)(6) Typed/Sworn Statement and Advisement of Rights of 6 July 2003	Attached as IO 17 (Maj Paulus and LCpl (b)(6) objected to the introduction of this Statement on the basis that PFC (b)(6) was available for testimony—Statement may be considered only as to Sgt Pittman)	X	
IO Exhibits 18 and 19 were withdrawn and not introduced			
(b)(6) Sworn Statement	Attached as IO 20	X	
(b)(6) Sworn Statement	Attached as IO 21	X	
Photographic Lineup Display	Attached as IO 22	X	

LCpl (b)(6) Typed/Sworn Statement of 22 June 2003	Attached as IO 23	X	
LCpl (b)(6) Typed/Sworn Statement of 24 June 2003	Attached as IO 24	X	
LCpl (b)(6) Handwritten/Sworn Statement of 13 June 2003	Attached as IO 25	X	
LCpl (b)(6) Results of Interview of 6 June 2003	Attached as IO 26A (Maj Paulus objected to the introduction of this Statement on the basis that it is unsworn—Statement may be considered only as to Sgt Pittman and LCpl (b)(6))	X	
LCpl (b)(6) Handwritten/Sworn Statement of 13 June 2003	Attached as IO 26	X	
LCpl (b)(6) Typed/Sworn Statement and Advisement of Rights of 21 June 2003	Attached as IO 27	X	
Sgt (b)(6) Handwritten/Sworn Statement of 17 June 2003	Attached as IO 28	X	
Toxicology Report of Mr. (b)(6)	Attached as IO 29	X	
Autopsy Report of Mr. (b)(6)	Attached as IO 30	X	
Autopsy Protocol of Mr. (b)(6)	Attached as IO 31	X	
Certificate of Death of Mr. (b)(6)	Attached as IO 32	X	
Autopsy Photographs of Mr. (b)(6)	Attached as IO 33	X	
Curriculum Vitae of LTCOL Ingwerson, USA (Pathologist)	Attached as IO 34	X	
2/25 Detention Facility Logbook Entry for 3 June 2003	Attached as IO 35	X	
Grant of Testimonial Immunity for SSgt (b)(6)	Attached as IO 36	X	
Undated E-mail from Capt (b)(6)	Attached as IO 37	X	

Preliminary Results of Autopsy prepared by S/A (b)(6)	Attached as IO 38	X	
Diagram of Throat	Attached as IO 39	X	
(b)(6) Medical History prepared by S/A (b)(6)	Attached as IO 40	X	
Curriculum Vitae of Dr. Radelat	Attached as IO 41	X	
LCpl (b)(6) written objection to use of statements	Attached as IO 42	X	
LCpl (b)(6) written objection to use of (b)(6) brothers' statements	Attached as IO 43	X	
Undated Typed/Unsworn Statement of Maj Paulus	Attached as IO 44	X	
Maj Paulus's Advisement of Rights on 2 July 2003	Attached as IO 45	X	
Curriculum Vitae of LCpl (b)(6)	Attached as IO 46	X	
Trial Counsel's Memorandum of Law re: Admissibility of Statements	Attached as IO 47	X	
Results of Interview of Maj Paulus on 12 June 2003	Attached as IO 48 (Maj Paulus and Sgt Pittman objected to the introduction of this Statement on the basis that it is unsworn—Admissible only as to LCpl (b)(6))	X	
LCpl (b)(6) Handwritten/Sworn Statement of 14 June 2003	Attached as IO 49	X	
LCpl (b)(6) Handwritten/Sworn Statement of 14 June 2003	Attached as IO 50	X	
Results of Interview of LCpl (b)(6) on 14 June 2003	Attached as IO 51 (Sgt Pittman objected to the introduction of this ROI on the basis that it is unsworn—Admissible only as to Maj Paulus and LCpl (b)(6))	X	
LCpl (b)(6) Memorandum of Law re: Obeying a Lawful Order	Attached as IO 52	X	

LCpl (b)(6) Memorandum of Law re: Use of Force	Attached as IO 53	X	
Grant of Testimonial Immunity for PFC (then LCPL) (b)(6)	Attached as IO 54	X	
Maj (b)(6) Typed/Sworn Statement of 2 February 2004	Attached as IO 55	X	
HM2 (b)(6) Typed/Sworn Statement of 26 June 2003	Attached as IO 56 (Maj Paulus objected to the introduction of this Statement on the basis that HM2 (b)(6) was available for testimony—Statement may be considered only as to Sgt Pittman and LCpl (b)(6))	X	
LCpl (b)(6) Typed/Sworn Statement of 13 June 2003	Attached as IO 57	X	
Results of Interview of PFC (b)(6) on 20 June 2003	Attached as IO 58 (Maj Paulus objected to the introduction of this Statement on the basis that it is unsworn—Statement may be considered only as to Sgt Pittman and LCpl (b)(6))	X	
Sgt Pittman's USMC records	Attached as IO 59	X	
Sgt Pittman's civilian employment records	Attached as IO 60	X	

Block 15.

The defense requested certain objections to be noted for the record. In accordance with instructions, only those objections which were in writing would be noted in this report. The defense submitted the following written objections:

1. LCpl (b)(6) objected to the admission and consideration of certain statements taken in violation of his Article 32 rights. Through counsel, LCpl (b)(6) submitted a written memorandum which was marked and included as IO Exhibit 42.

2. LCpl (b)(6) objected to the admission and consideration of certain statements made by the (b)(6) on the basis that they are unreliable. Through counsel, LCpl (b)(6) submitted a written memorandum which was marked and included as IO Exhibit 43.

There were no other written objections. However, there were many oral objections. In my discretion, I am noting two, both of which were lodged by Maj Paulus:

1. Maj Paulus moved that I recuse myself as the Investigating Officer because of my participation as the Investigating Officer in the Article 32 of Maj (b)(6) which was conducted in December 2003. After answering questions propounded to me on voir dire, I assured counsel for Maj Paulus that I could compartmentalize the testimony and evidence I had seen and heard at the previous Article 32 and not consider that information against Maj Paulus. I also informed counsel that if there was any evidence presented at the earlier Article 32 that could possibly have an adverse affect on the outcome, I would notify counsel and we would discuss and resolve the issue. I denied the challenge for cause.

2. Maj Paulus also argued that Marine Corps Reservists, not on active duty, are considered in the military for purposes of RCM 405(g)(2)(A) in determining witness availability. I disagreed. In my opinion, Reservists who were not on active duty nor performing drills are to be considered as civilian witnesses for purposes of RCM 405(g)(2)(B) and determining "reasonable availability."

Block 20.

I. INTRODUCTORY COMMENTS

An Article 32 investigation to examine the charges preferred against Maj Paulus, Sgt Pittman, and LCpl (b)(6) was held on 26-30 January and 2 February 2004. All available witnesses either testified in person or by telephone. Statements, sworn and unsworn, were submitted in lieu of testimony for those witnesses who were not reasonably available. In addition, photographs and other physical or documentary evidence also was admitted and considered.

This report will be in the following format. First, I will make general comments about the evidence. Second, I will address the evidence specifically for and against each accused and make disposition recommendations.¹

II. GENERAL COMMENTS

The evidence demonstrated that the Marines of 2/25 received rudimentary and brief (an hour or two) law of war training at Camp LeJeune prior to deploying to Iraq. The training was presented by Maj Paulus. There was no school or practical training on the operation of an EPW detention facility.

Once in Iraq, 2/25 was tasked by the 15th MEU with running the Camp Whitehorse detention facility outside of Al-Nasiriyah. This assignment began on or around the beginning to mid-April 2003. The detention facility initially was supervised by SSgt (b)(6) then by Maj (b)(6). Approximately the end of May, Maj Paulus was assigned as OIC. By all accounts, the detention facility both before and during Maj Paulus' tenure was run professionally and the EPWs were well treated. Maj Paulus had been in charge for only 2-3 days when (b)(6) arrived on 3 June 2003.

Sgt Pittman was a guard at the detention facility and had been almost from the beginning of 2/25's tasking. LCpl (b)(6) arrived at Camp Whitehorse a short time later and also was assigned the duties of guard. Neither Sgt Pittman nor LCpl (b)(6) received any formal training in being guards in an EPW detention facility. However, Sgt Pittman's civilian employment is with the Federal Bureau of Prisons as a correction officer; LCpl (b)(6) was employed with Delta Airlines before his activation.

With the exception of one witness, LCpl (b)(6) who testified with immunity and pursuant to a plea agreement, no one observed any 2/25 Marine maltreat any Iraqi EPWs. LCpl (b)(6) on the other hand, testified that Sgt Pittman and he had not only mistreated, abused, and assaulted (b)(6) but also inflicted unwanted and unprovoked beatings on (b)(6). Every other witness who testified was universally pleased with the manner in which the detention facility functioned and the way in which the EPWs, to include (b)(6) were treated.

Regarding the treatment of (b)(6) and his death, the evidence is unconvincing at best as to the cause of his death. When (b)(6) entered the detention facility in the evening on 3 June 2003, he was seemingly healthy and strong, not to mention combative.² A little more than 48

^{1/} Because a verbatim transcript has been prepared, I have not summarized the witnesses' testimony.

^{2/} Witnesses who testified about the capture of (b)(6) at his residence indicated that no force was needed or used. Therefore, any injuries which were later observed during the autopsy

continued

hours later at just after midnight on 6 June 2003, he was dead. (b)(6) was struck several times during his in-processing into the detention facility when on two occasions he grabbed LCpl (b)(6) by the wrist.³ Later, to be sure, Sgt Pittman and LCpl (b)(6) also struck (b)(6) without provocation or justification. What damage and to what extent the earlier blows to the rib cage contributed to (b)(6) death is unknown. Also unknown is whether Sgt Pittman's and LCpl (b)(6) assaultive conduct contributed to or even caused his rapid demise. The autopsy revealed that (b)(6) had seven (7) broken or cracked ribs, a fractured hyoid bone (a horseshoe shaped bone in the throat), and a number of contusions on his torso, arms, and legs. Any one of these injuries individually probably would not have caused death. However, combine (b)(6) pre-existing medical condition of asthma with the stress of capture, and the injuries, either individually or in combination, could have placed (b)(6) *in extremis*. However, in my view, the medical evidence is inconclusive regarding (b)(6) cause of death.

One thing is certain. (b)(6) died while in the care and custody of 2/25. The difficulty here, from a criminal justice perspective, is assessing culpability to the individual(s) who are responsible.

III. EVIDENCE RELATIVE TO EACH ACCUSED

A. Maj Paulus

Maj Paulus is charged with two (2) specifications of willful dereliction of duty (Charge I, Specifications 1 and 2) in violation of Art 92, one (1) specification of maltreatment of (b)(6) (Charge II, Specification) in violation of Art 93, one (1) specification of making a false official statement (Charge III, Specification) in violation of Art 107, one (1) specification of aiding and abetting the aggravated assault of (b)(6) (Charge IV, Specification) in violation of Art 128, and one (1) specification of aiding and abetting the negligent homicide of (b)(6) (Charge V, Specification) in violation of Art 134.

The only offense for which I believe probable cause exists is the dereliction of duty charge with regards to failing to properly safeguard the physical health, welfare, and treatment of (b)(6).

continued

must necessarily have occurred while (b)(6) was in the custody of the 2/25 Marines at Camp Whitehorse.

^{3/} Interestingly, Maj Paulus does not mention in his unsworn/handwritten statement of 6 June 2003 (IO Exhibit 10) that (b)(6) was struck at all, let alone in the rib cage, during in-processing and specifically denies that this in fact occurred in his sworn statement of 13 June 2003 (IO Exhibit 11). LCpl (b)(6) however, testified consistently with his 6 July 2003 sworn statement (IO Exhibit 16) that HM3 (b)(6) and Sgt (b)(6) both administered blows to the rib cage when (b)(6) grabbed LCpl (b)(6) by the wrist. HM3 (b)(6) also does not mention that he had to strike (b)(6) during in-processing.

alleged in Charge I, Specification 2. However, I believe the evidence supports a negligent dereliction of duty rather than a wilful one. There is no credible or reliable evidence to support any of the remaining charges and specifications.⁴

1. Dereliction of Duty as to Iraqi prisoners (Charge I, Specification 1)

The evidence regarding Maj Paulus' performance as OIC spanned a mere seven (7) days, from the time he assumed command of the facility on or about 31 May to 6 June 2003, the day Mr. (b)(6) was found dead. The evidence demonstrated that Maj Paulus had no formal training, or even on-the-job training, in running an EPW detention facility. He took over as OIC from Maj (b)(6) and kept in place the procedures and policies instituted by Maj (b)(6) but also continued to improve the conditions of the facility as well as the comforts, as meager as they were, for the EPWs. Everyone who testified, to include Maj (b)(6) (Maj Paulus' Company Commander) and Lt Col (b)(6) (2/25's Executive Officer), supported the view that Maj Paulus neither authorized nor condoned indiscriminate and malicious treatment of the EPWs. In fact, LCpl (b)(6) testified that Maj Paulus made it clear that EPWs were not to be mistreated. LCpl (b)(6) added that Maj Paulus was not well-served by his SNCOIC, SSgt (b)(6), who also testified under a grant of immunity. According to LCpl (b)(6) SSgt (b)(6) ignored Maj Paulus' clear intent and frequently allowed the guards to treat the EPWs more harshly than Maj Paulus would have tolerated, even though this "harsh" treatment may not have risen to the level of being considered inhumane. With the exception of the arbitrary beatings inflicted upon Mr. (b)(6) and (b)(6) by Sgt Pittman and LCpl (b)(6) no one, not even LCpl (b)(6) testified that any other EPW was mistreated or subjected to excessive and unnecessary force while Maj Paulus was the OIC.

Accordingly, I find no evidence to support Charge I, Specification 1 there under, which alleges a willful dereliction of duty in properly safeguarding all Iraqi EPWs from 15 May to 30 June. First, Maj Paulus did not assume command of the detention facility until 31 May and therefore could not be held accountable for any mistreatment before that day. Second, the evidence regarding his performance of duties focused on the period from 31 May until (b)(6) death, so there was absolutely no evidence presented to support this charge, even if valid, for the time after 6 June. Third, and perhaps most importantly, as described above, the evidence was entirely

^{4/} The maltreatment charge alleged in Charge II as a violation of Article 93, in my view, is so closely related to the dereliction of duty accusation in Specification 2 of Charge I as to be one in the same for purposes of analysis. However, because a maltreatment charge under Article 93 requires some degree of intent as a *mens rea*, and because I believe Maj Paulus was only negligently derelict in not safeguarding (b)(6), I believe the evidence fails to support fully a maltreatment violation. Moreover, as discussed more fully below, the evidence may support a charge of negligent homicide against Maj Paulus, but for the reasons I discuss, I do not believe that a conviction would be possible and thus do not recommend any action against Maj Paulus on that charge.

favorable towards Maj Paulus; that he performed his duties diligently and with great care to ensure that the EPWs were treated humanely.

At this point, it is logical to discuss what, if any, relevance does the so-called "50-10" rule have with respect to this charge of dereliction of duty. The charge of dereliction of duty, whether it be intentional or negligent dereliction, requires as one of its elements that the accused knew or reasonably should have known of the duty. In this case, the Government is recommending the charge of *wilfull* dereliction of duty in that Maj Paulus failed to properly safeguard the physical health, welfare, and treatment of unknown Iraqi prisoners.

There is no doubt that Maj Paulus knew what his duty was—to run a detention facility. "While the existence of a duty and the accused's knowledge of that duty must be demonstrated by the evidence, doing so is generally not difficult." United States v. Shelly, 19 MJ 325, 328 (CMA 1985). The Government has clearly proven that Maj Paulus knew that he had the responsibility of running the Detention Facility. Even Maj Paulus does not dispute this. But knowing what one's duty is and knowing how to perform the duty are quite different. The issue here is whether Maj Paulus knew how to perform his duty as OIC of Camp Whitehorse's Detention Facility and whether he was derelict in that performance.

There was no evidence presented that would indicate that when Maj Paulus received the assignment as OIC, that he was also instructed, either orally or in writing, that he was to provide humane treatment to all Iraqi prisoners within his control and custody. While such evidence is lacking in the record, one could argue it is implicit within the tasking of being the OIC that Maj Paulus knew or should have known that all Iraqi detainees were entitled to humane treatment and protection from acts of violence or intimidation. If not implicit, then at least common sense would dictate that prisoners are not to be mistreated. Military duties are generally clearly assigned, but to the extent that they are not, "common sense and military custom help fill in the gaps." Shelly, 19 MJ at 328. In this case, however, we are not left without guidance in this area. Article 13, Geneva Convention relative to the Treatment of Prisoners of War (IO Exhibit 1) (hereinafter simply referred to as "GPW"), provides that all "[p]risoners of war must at all times be humanely treated." In fact, DoD Directive 2310.1 states unequivocally that "[t]he U.S. Military Services shall comply with the principles, spirit, and intent of the international law of war, both customary and codified, to include the Geneva Conventions." Para. 3.1, DODD 2310.1 (IO Exhibit 4) (emphasis added); see also MCRP 4-11.8C, Enemy Prisoners of War and Civilian Internees, Ch. II, paragraphs 1 and 2. However, DODD 2310.1 in paragraph 3.2 goes on to say that "[t]he U.S. Military Services shall be given the necessary training to ensure they have knowledge of their obligations under the Geneva Conventions and as required by DoD Directive 5100.77 before an assignment to a foreign area where capture or detention of enemy personnel is possible." (Emphasis added).

It seems self-evident then that before a Marine can be punished for failing to comply with Paragraph 3.1 of DODD 2310.1 which requires all Marines to honor "the principles, spirit, and intent of the . . . Geneva Conventions" it is incumbent upon the command to first meet its obligations of providing the requisite training as required in Paragraph 3.2 of DODD 2310.1.

Stated another way, the training is a condition precedent before a violation can be punished. In this case, the record is devoid of any evidence that indicates that Maj Paulus received the mandatory command-sponsored training.

To be sure, the Government is not recommending that Maj Paulus be charged with violating DODD 2310.1 or any provision of the GPW. However, the charge of wilfull dereliction of duty as proposed in Charge I, Specification 1, against Maj Paulus all but alleges a violation of the Law of War (or war crime). An analysis of the proposed UCMJ charge in this context is so closely related to a GPW violation as to make the two indistinguishable for purposes of this discussion.⁵ But for the policy against charging U.S. service members with war crimes, the acts alleged to have been committed which form the basis for the dereliction of duty charge could easily form the basis for a law of war violation if committed by an enemy combatant. Accordingly, an analysis of the GPW and pertinent Marine Corps and DoD Directives is required in order to understand what facts are necessary to constitute a dereliction of duty for failing to safeguard Iraqi prisoners. Thus, citing various DoD, Marine Corps, or treaty provisions is not only appropriate but necessary.

As indicated above, prior to being deployed, Maj Paulus received no training, at least no recent training, in the Law of War, the handling of EPWs, or the operation of an EPW detention facility. DODD 2310.1, para. 3.2, puts the initial onus on the command to provide the critical Law of War training. Moreover, DODD 2310.1, para. 1.2, makes the U.S. Army the Executive Agent "for the administration of the DoD EPOW Detainee Program" lending further weight to the defense argument that Maj Paulus should not even have been put into the position of being OIC of the Camp Whitehorse Detention Facility. While one might think that Maj Paulus, as a field grade officer, had an affirmative obligation to learn what his duties were as OIC, I could find no authority for shifting the burden to the Marine. Nevertheless, the record indicates that Maj Paulus' predecessor, Maj (b)(6) and his senior leadership did seek guidance and assistance. Could any have done more to understand the perhaps subtle nuances of running a detention facility. Possibly, but the law doesn't require it. Under the circumstances, I believe Maj Paulus did what he could. This does not end the inquiry, however, and automatically clear Maj Paulus of any wrongdoing with respect to the treatment of the Iraqi EPWs as a whole.

"There is no language in Article 92(3) [of the UCMJ] which supports [a] tactical duty-based distinction in dereliction-of-duty cases. Moreover, from the very beginning, [the Court has] consistently applied a simple-negligence standard in judging nonperformance of military duties regardless of the nature of the duty or the status of the person required to perform it. However, [the Court has] also held that the factfinder must consider the nature and complexity of the duty as part of all the circumstances of the case when applying this simple-negligence standard." United States v. Lawson, 36 MJ 415, 422 (CMA 1993) (citations omitted).

^{5/} It is DoD Policy that a member of the armed forces who commits an offense that qualifies as a "war crime" will be charged under a specific article of the UCMJ. FM 27-10, para. 507(b).

Failure to use common sense, together with other factors, may be a basis for sustaining a conviction for negligent dereliction of duty. United States v. Lawson, 33 MJ 946, 958 (NMCMR 1991), *aff'd* 36 MJ 415 (CMA 1993). As mentioned above, "common sense and military custom help fill in the gaps" when there is any doubt in what duties are to be performed. Shelly, 19 MJ at 328. In United States v. Dellarosa, 30 M.J. 255 (CMA 1990), the Court upheld the negligent dereliction of duty conviction of an enlisted weatherman who inaccurately reported the weather. Relying on the defense of ineptitude, the accused argued that he was an inexperienced and unseasoned (no pun intended) weatherman not well versed or trained in the use of certain meteorological instruments. The Court stated that "[a]ppellant's purported inexperience and tiredness were circumstances to consider in this regard, but they did not legally preclude a finding of negligence." Dellarosa, 30 MJ at 260.

"In view of the above, ineptitude as a defense is largely fact-specific, requiring consideration of the duty imposed, the abilities and training of the soldier upon whom the duty is imposed, and the circumstances in which he is called upon to perform this duty. The factfinder must determine whether this defense exists in a particular case." United States v. Powell, 32 MJ 117, 121 (CMA 1991) (citations omitted). In Powell, a Marine Officer, who was tried here at Camp Pendleton, was charged with a number of counts of dereliction of duty. The trial court found him guilty of some and not guilty of others. The accused relied upon the defense of ineptitude arguing that the evidence of record "clearly established" his lack of skill and training in performing his CMS duties and the command's lack of support for him in this function. Powell, 32 MJ at 121. The Court asserted that it was obvious that the trial judge concluded that the defense of ineptitude was justified as to the counts which resulted in acquittal. However, with respect to the counts of dereliction which resulted in conviction, the record is equally clear that "the particular duties alleged in the specifications were shown at trial not to require great skill, ability, or assistance." Id. Thus the defense of ineptitude was not proven. The lessons learned from the Powell case are two-fold. First, if specialized skill is necessary to carry out one's duties, then lack of training and command support is relevant in determining whether an individual is derelict in the performance of those duties. Second, even where an accused lacks the specialized skill and training required to competently perform one's assigned duties, negligent dereliction of duty may still be proven if the tasks not performed competently are routine, not difficult, or simply a matter of common sense. In Powell, the accused was the CMS officer with little to no training. The accused was acquitted of those counts which required technical skill and training to perform. One function of the accused's duties was to complete certain documentation. Some of the documentation was either falsely completed or inaccurate. Others, the accused simply failed to do altogether. Of the documentation specifications alleging dereliction, the accused was convicted and the convictions were upheld on appeal because these aspects of his CMS duties did not require special skill or training. In other words, it was a matter of common knowledge that it is wrong to submit false reports or to simply fail to submit any reports at all.

MCRP 4-11.8C, Chap. I, para. 4, states that "all individuals in your custody should receive humane treatment" and that Marines should apply the "Golden Rule" when handling EPWs. This admonition, of course, emanates from Article 13 of the GPW (IO Exhibit 1). Article 13

should be read in conjunction with Article 17 of the GPW which prohibits "physical or mental torture . . . [and] other form[s] of coercion." But what is humane treatment and what is torture or coercion? As for Maj Paulus, the analysis boils down to this in my view. He was not trained to do the job of running the Detention Facility. From the perspective of one not trained, it may not appear to be unreasonable, wrong, or illegal . . . in other words, inhumane or tortuous . . . to subject Iraqi prisoners of war to the 50/10 procedure or to apply reasonable physical force to a prisoner who is being recalcitrant or disobedient in order to gain immediate compliance with orders and directives given by the 2/25 Marine guard force. Against this backdrop is the 2/25 Combat SOP at page 3-1-5 (IO Exhibit 3) which allows EPWs to be flex cuffed, blind-folded, and gagged during transportation to a detention facility. One justifiably and reasonably could conclude that if it is permissible to cuff and blind-fold⁶ a prisoner during transit, that it must not be inhumane or tortuous treatment. The logic would continue that if it is legally acceptable to treat an EPW in this way during transit, then it certainly could not be objectionable to treat the EPW similarly during captivity at the detention facility. Stated another way, if the treatment is considered humane when done in the back of a Humvee it must also be humane if done in the detention facility. The GPW does not define humane treatment. However, guidance can be found in the authoritative works of Jean S. Pictet, the reporter for the Geneva Conventions who provided commentary. In Article 130 of the GPW, in explaining inhumane treatment, Pictet states that "the aim of the Convention is certainly to grant prisoners of war in enemy hands a protection which will preserve their human dignity and prevent their being brought down to the level of animals." No evidence presented even came close to this definition.

FM 34-52, Intelligence Interrogation, states on page 1-8 (IO Exhibit 8), that physical torture includes "forcing an individual to stand, sit, or kneel in **abnormal positions** for prolonged periods of time." (Emphasis added). Here, there was evidence that some Iraqi EPWs were subjected to the 50/10 procedure for as long as 8-10 hours. However, there was no evidence even to suggest that any of the EPWs were placed in abnormal positions (akin to those imposed upon American EPWs in Vietnam) where severe pain was inflicted. While undoubtedly uncomfortable, it is difficult to characterize the 50/10 as inhumane or tortuous even when factoring in the Iraqi heat. Certainly, the fact that the prisoners were fed and given water during the entire process seriously weakens any argument that the 2/25 guards were intentionally inflicting physical or mental stress upon the EPWs in an inhumane way.

In addition to condemning inhumane treatment for EPWs, Article 13 of the GPW (IO Exhibit 28), also proscribes violence of any kind. Specifically it states that "prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity." What about the occasional use of physical force to obtain immediate obedience to orders? Is this appropriate and acceptable within the meaning of Article 13 or does

^{6/} I draw no distinction between the use of a blind fold and the placing of a sandbag over an EPW's head especially since the sandbags were completely porous, see-through, and did not restrict one's breathing.

Article 13 absolutely prohibit any offensive or physical violence upon an EPW for whatever reason? I have found no case law interpreting this provision of Article 13 and Pictet's commentary also offers no help. If read literally, which I am inclined to do at this point, then it would seem that what the 2/25 guards did is in violation of the law of war.⁷ Two theories of criminal liability now need to be addressed to determine whether Maj Paulus can be held accountable for the acts of his guards.

First, Section 501 of FM 27-10 holds a commander responsible for the acts of subordinates when the commander ordered the illegal conduct or "has actual knowledge, or should have knowledge, through reports received by him or through other means, that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to take the necessary and responsible steps to insure compliance with the law of war or to punish violators thereof."

This is known as the *Yamashita* standard. United States v. Tomoyuki Yamashita, Military Commission Appointed by Paragraph 24, Special Orders 110, Hq. U.S. Army Forces Western Pacific, 1 Oct. 1945. Despite this policy, it is questionable whether a commander could be held liable in a domestic court-martial for the unlawful acts of subordinates based on the *Yamashita* "should have known" standard, since it is DoD policy that U.S. servicemen be tried in courts-martial rather than in international war-crime forums and there is no separate crime of command responsibility or theory of liability, such as conspiracy, for command responsibility under the UCMJ. Accordingly, it appears that a prosecutor in a domestic court-martial must establish actual knowledge on the part of the commander to be liable for the acts of subordinates. United States v. Calley, 46 CMR 1131 (ACMR 1973); United States v. Medina, CM 427162 (ACMR 1971). There was no evidence presented that hinted let alone showed that Maj Paulus ordered his guards to strike or physically abuse any prisoner when they stepped out of line or that he knew that they were doing so.

This leaves us with the possible lesser included offense of negligent dereliction of duty as the second theory of liability. If Maj Paulus did not know that his guards were using physical violence at times, the argument can be made that he was negligently derelict in the performance of his duties. As the OIC, it could be argued that it was incumbent upon him to ascertain what was being done to those prisoners who refused to comply with orders and directions. He would be derelict if he failed to do this or simply ignored what was going on within his detention facility as it related to the treatment of the EPWs. This is not some specialized skill that he needed to be taught or required training in order to perform competently as in the Powell case. However, this begs the next question. What if Maj Paulus observed the offending treatment but did not know that it was in violation of the GPW. Here is where I believe that some prior training would be required before Maj Paulus could be held accountable.

^{7/} When EPWs, who also are subject to the UCMJ while confined, violate orders and directions, the remedy is not to use physical force to obtain compliance but to employ the penal and disciplinary sanctions available under the Geneva Convention, Articles 82-90. See also FM 27-10, Sections 158-166.

As indicated above, DODD 2310.1, para. 3.2, makes the Services responsible for providing the necessary training to the troops to "ensure they have knowledge of their obligations under the Geneva Conventions." Had Maj Paulus received this training he most assuredly would have known that it was a violation to strike an EPW for any reason even if it was in direct response to disobedient conduct and done to gain compliance. It may not be readily apparent to the untrained eye that the Marine guards' conduct was unlawful. Bear in mind that the evidence demonstrated that no guard indiscriminately struck prisoners just for fun or reprisal (except, as LCpl (b)(6) testified, that Sgt Pittman and he did so with respect to (b)(6) and (b)(6), and, on those occasions when force was used, it was always in response to an EPW's disobedience and never excessive. Under these circumstances, an untrained individual might conclude that it was entirely appropriate and even condone its use. If this were the case, then Maj Paulus could hardly be said to be derelict for allowing it to occur.

However, even still, the evidence showed, based upon the testimony of LCpl (b)(6) alone, that Maj Paulus expressed his intent clearly to the guards that all EPWs were to be treated humanely. Furthermore, the evidence also showed, again based upon the testimony of LCpl (b)(6) that Maj Paulus was not present when Sgt Pittman and he indiscriminately abused (b)(6) and (b)(6). Finally, as LCpl (b)(6) testified, Maj Paulus was not well-served by SSgt (b)(6) his SNCOIC, who allowed the guards to exert more pressure and force upon the EPWs than what Maj Paulus would have allowed.

Given this analysis and the state of the evidence, it seems to me that there is little to no evidence to support Charge I, Specification 1, as it relates to dereliction of duty in failing to properly safeguard unknown Iraqi prisoners to include (b)(6). However, with respect to Charge I, Specification 2, as it relates to safeguarding the health, welfare, and treatment of (b)(6) my conclusion is different.

2. Dereliction of Duty as to (b)(6) (Charge I, Specification 2)

Regarding (b)(6), the evidence is different in degree and quality. The facts lending support to this allegation all occurred on 5 June 2003. On this day, (b)(6) was exhibiting very unusual behavior. He was very lethargic, slow, and at times would not even move at all. He was not eating and drinking almost nothing. Some witnesses even noticed that he was having some difficulty breathing. He had defecated himself three times and his feces covered most of his body and clothing. When made to stand, he appeared to have intentionally thrown himself twice into the concertina wire inside the holding building where he was housed. This, according to Maj (b)(6) Because of the putrid odor caused by (b)(6) defecation and the associated health

8/ However, LCpl (b)(6), who did not testify, but whose unsworn Results of Interview ("ROI") (IO Exhibit 26a) was admitted only as to Sgt Pittman and LCpl (b)(6), described the events differently. He indicated that (b)(6) fell into the concertina wire with his arms at

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risks with keeping him in close proximity to other EPWs and Marine guards, Maj Paulus ordered that he be removed from the holding building and taken outside to the holding pen. Maj Paulus also ordered that (b)(6) clothing be removed from him and burned.

LCpl (b)(6) received the order to get (b)(6) now naked, out of the building. LCpl (b)(6) was having a lot of trouble in moving (b)(6) a fairly large man to begin with and who was nothing but dead weight at this point. LCpl (b)(6) was finding it difficult to get a grip on (b)(6) because of the sweat compounded by the feces that covered his body. Frustrated by the task and offended by the horrendous smell, LCpl (b)(6) turned to Maj Paulus for help. Maj Paulus told LCpl (b)(6) to "drag him by the neck." All witnesses who were present when what has been called "the dragging incident" occurred and who testified (SSgt (b)(6) and Maj (b)(6) described what happened next in similar fashion. Both SSgt (b)(6) and Maj (b)(6) testified that LCpl (b)(6) did not drag (b)(6) out by the neck or throat.⁹ Rather, he carefully placed one hand under his head. The other hand was cupped around (b)(6) chin.¹⁰ LCpl (b)(6) then painstakingly dragged (b)(6) approximately 20-30 feet to the outside holding pens and laid him down. This occurred at approximately 1600-1700 hours. HM3 (b)(6) was called to examine (b)(6) and reported to Maj Paulus that (b)(6) either had a mild heart attack or was faking it. Despite the opinion,¹¹ Maj Paulus allowed (b)(6) to remain lying naked outside in the sun and heat for the rest of the day and into the night. Shortly after midnight, (b)(6) was found dead.

continued

his side and made no effort to break his fall or catch himself. This description does not coincide with the conclusion that (b)(6) purposefully threw himself into the wire. NOTE: LCpl (b)(6) ROI may not be considered against Maj Paulus. LCpl (b)(6) also made a sworn statement (IO Exhibit 26), which may be considered against Maj Paulus, and it essentially echoes what was contained in his unsworn statement on this topic, however, his description was not as detailed.

^{9/} Maj Paulus, however, in his 13 June sworn statement (IO Exhibit 11) indicates that LCpl (b)(6) dragged (b)(6) by the throat.

^{10/} LCpl (b)(6) who did not testify, made a sworn statement on 16 June 2003 (IO Exhibit 14) in which he described the manner in which he transported (b)(6). His version was consistent with SSgt (b)(6) and Maj (b)(6). However, LCpl (b)(6) did mention that he struck (b)(6) in the stomach, something that no one who testified at the Article 32 said that they witnessed.

^{11/} Maj Paulus's 6 June statement (IO Exhibit 10) indicates that he believed from the beginning that (b)(6) unwillingness to comply with simple directions was the product of his stubbornness and deliberate refusal, not because (b)(6) was physically unable to do. This mindset, if true, guided Maj Paulus in his course of conduct towards (b)(6).

The legal analysis above with respect to Specification 1 is equally applicable here and therefore will not be repeated. While Maj Paulus did not receive any training whatsoever in running an EPW camp, none was needed to recognize what one's duties may have been with respect to Mr. (b)(6) on 5 June 2003. By any objective standard, clearly something was very wrong with Mr. (b)(6). Even one not medically trained would have recognized this. Granted, (b)(6) presented a very challenging set of circumstances for Maj Paulus. (b)(6) had defecated himself and needed clean clothing to wear. Understandably, Maj Paulus was reluctant to provide clean clothing, which was in rather limited supply, out of fear that (b)(6) would again soil himself, which proved to be the case. However, while extra clothing may have been lacking, there is no evidence that Maj Paulus made any effort to locate clean garments either from the local populace or elsewhere. Moreover, once Maj Paulus made the decision to remove Mr. (b)(6) from the holding building, no thought apparently was given to using a stretcher (which were available) to move him, rather than having LCpl (b)(6) drag his naked body over a very rough surface. Similarly, there also appeared to be no thought in placing (b)(6) somewhere else other than outside in the hot sun. Finally, when HM3 (b)(6) a corpsman, opined that (b)(6) may possibly have suffered a mild heart attack, Maj Paulus did nothing, not even suggest that a medical doctor take a look and provide a second opinion.¹²

Taken together, I believe these facts demonstrate that Maj Paulus was *negligently* (not wilfully) derelict in failing to safeguard (b)(6) welfare and health.

3. Maltreatment of (b)(6) (Charge II, Specification)

There are two elements to this offense: 1) that a certain person was subject to the orders of the accused; and, 2) that the accused was cruel toward, or oppressed, or maltreated that person.

Maltreatment is a general intent crime. United States v. Hanson, 30 MJ 1198, 1201 (AFCMR 1990); United States v. Piatt, 17 M.J. 442, 445 (C.M.A.1984); United States v. Welsh, 15 C.M.R. 573, 574 (N.B.R.1954). The intent which establishes the offense in this case is contained in the language and actions which were expressed, regardless of any intent the appellant may have subjectively possessed. See United States v. Gilluly, 13 U.S.C.M.A. 458, 461, 32 C.M.R. 458, 461 (1963). The essence of the offense is not necessarily dependent on what a military superior may intend by words or acts. The offense occurs when the treatment, viewed objectively, results in physical or mental pain or suffering and is abusive or otherwise unwarranted, unjustified and

^{12/} The record indicates that much was going on at Camp Whitehorse on 5 June 2003. First, a high profile prisoner, (b)(6), was arriving and preparations had to be made to accept him. Second, intel had been received that the (b)(6) supporters were gathering in great numbers and were going to attack the camp or stage a massive protest. Preparations had to be made to repel them. While I understand that Maj Paulus most likely was preoccupied with the sheik, I nevertheless believe that only the slightest amount of attention to (b)(6) and his condition was necessary to recognize that he needed some medical care.

unnecessary for any lawful purpose. MCM, Part IV, paragraph 17c(2) (1984); DA Pamphlet 27-9, Military Judges' Benchbook, paragraph 3-31b, Change 1 (15 February 1985). It has been observed that "the offense of maltreatment must be real, although not necessarily physical, cruel or inhuman and the act or acts alleged must be toward a person subject to orders of the accused." United States v. Finch, 22 C.M.R. 698, 701 (N.B.R.1956).

Although closely related to Charge I, Specification 2, as indicated above, and even though a close call, I do not believe that the facts demonstrate that Maj Paulus intentionally maltreated (b)(6) with the degree of thought necessary to make out this offense.

4. False Official Statement (Charge III, Specification)

On 6 June 2003, after (b)(6) body was discovered, Maj Paulus and his company commander, Maj (b)(6) got together and agreed that it would be good idea for everyone involved to prepare a written statement to facilitate the inevitable and certain investigation. Maj Paulus also prepared a written statement which was given to Maj (b)(6) and ultimately to the NCIS. In the written statement, Maj Paulus stated that "[b]eatings are neither authorized nor tolerated." It is this statement which forms the basis for the false official statement accusation.

There are four elements to this offense: 1) that the accused made a certain official statement; 2) that the statement was false; 3) that the accused knew the statement to be false at the time of making it; and, 4) that the false statement was made with intent to deceive.

Other than the first element, the government has failed to prove any of the other elements. As far as Maj Paulus was concerned, the statement was not false nor did he know or believe it to be false. The witness testimony amply demonstrated that Maj Paulus set the proper tone upon becoming the OIC on how EPWs were to be treated. He met with the guards and conveyed his intent to them that EPWs were to be treated humanely. As far as the evidence of record indicates, Maj Paulus was unaware that SSgt (b)(6) allowed the guards greater latitude in handling EPWs than Maj Paulus would have permitted. Moreover, Maj Paulus was completely in the dark that Sgt Pittman and LCpl (b)(6) badly abused (b)(6) and the (b)(6).

5. Aggravated Assault on (b)(6) (Charge IV, Specification) and Negligent Homicide (Charge V, Specification)

These two offenses, in essence, allege the same conduct and for all intents and purposes ought to be considered together. It is alleged in both Charges that Maj Paulus aided and abetted LCpl (b)(6) in the assault and in the negligent homicide of (b)(6).

There are four elements to aggravated assault: 1) That the accused did bodily harm to a certain person; 2) that the accused did so with a certain force; 3) that the bodily harm was done with unlawful force or violence; and 4) that the force was used in a manner likely to produce death or grievous bodily harm.

There are five elements to negligent homicide: 1) that a certain person is dead; 2) that this death resulted from the act or failure to act of the accused; 3) that the killing by the accused was unlawful; 4) that act or failure to act of the accused which caused death amounted to simple negligence; and, 5) that under the circumstances, the conduct of the accused was to the prejudice of good order and discipline or was of nature to bring discredit upon the armed forces.

An aider and abettor of an offense is equally guilty of the offense as one who commits it directly and may be punished to the same extent. See Art. 77.b(1), UCMJ. An aider and abettor is one who assists, encourages, advises, counsel, or commands another in the commission of an offense. See 77.b(2)(b). "In some circumstances, inaction may make one liable as a party, where there is a duty to act." See Art. 77.b(2)(b)(ii).

All of the facts related to these two offenses arise from the so-called "dragging incident" on 5 June 2003 by LCpl (b)(6). As mentioned above, it was Maj Paulus who ordered LCpl (b)(6) to drag (b)(6) out of the holding building to the outside holding pen. The language in the charge indicates that Maj Paulus ordered LCpl (b)(6) to drag (b)(6) by the throat or neck, a means likely to produce his death or grievous bodily harm. Admittedly, some support for this description can be found in the written statement submitted by Maj Paulus (IO Exhibit 11). However, the sworn testimony presented during the Article 32 hearing was entirely contrary to this. Everyone who testified stated that LCpl (b)(6) exhibited great care in cradling (b)(6) head from behind and on his chin when moving him to the outside holding pen. No one witnessed LCpl (b)(6) grab or drag (b)(6) by the throat.¹³ Based upon this testimony, it cannot be said that LCpl (b)(6) committed an aggravated assault upon (b)(6) and thus, neither did Maj Paulus as an aider and abettor.

^{13/} As alluded to above, there is conflicting versions of what happened. There is the version that appears in the written statements, some of which were obtained by NCIS. The defense has attacked the NCIS statements and the techniques NCIS employed to obtain these statements. Virtually every witness who testified disagreed to some degree with the accuracy of their written and signed statement. This is not a new or novel complaint. I have heard defense counsel raise this issue many times over during my career. What is different about this allegation is that 2/25's executive officer, LtCol (b)(6) a former prosecutor in his civilian career, also believes the complaints to be true and has been quite vocal about expressing his disgust with NCIS. The point to this discussion is this. While the written statements may back up the Government's case that LCpl (b)(6) dragged (b)(6) by the throat as ordered by Maj Paulus, it appears that many, if not all, of the percipient witnesses either have recanted this version or are willing to do so, thus creating credibility problems for the Government. Under oath and in court, the same witnesses will describe the "dragging incident" as careful and compassionate under the circumstances. Accordingly, the written statements will offer no help to the Government except to impeach the veracity of the very witnesses it will need during its case-in-chief to establish the facts necessary to survive a motion for a finding of not guilty in accordance with RCM 917.

The Government's pathologist expert, LTCOL (b)(6), U.S. Army, opined that (b)(6) died of strangulation. She testified that upon autopsy, she discovered that (b)(6) had a broken hyoid bone, a U-shaped bone that sits atop of the windpipe. She explained that it takes forceful pressure directly to the hyoid bone to break it. LTCOL (b)(6) further opined that the fractured hyoid bone caused swelling to the windpipe which eventually and completely obstructed the flow of oxygen to the lungs causing (b)(6) death. The defense called its own expert pathologist, Dr. (b)(6). He agreed that it would take direct pressure with sufficient force to break the hyoid bone. He disagreed however, that death was caused by strangulation as a result of the fractured hyoid bone. Dr. (b)(6) opined that based upon the autopsy performed by LTCOL (b)(6) he could not make a cause of death determination with any degree of medical certainty. LCdr (b)(6), 2/25's battalion surgeon, also testified. He is an emergency room doctor in his civilian life. He concurred with Dr. (b)(6) and opined that it is just as likely (b)(6) died because of a severe asthma attack.¹⁴

LTCOL (b)(6) also stated that the hyoid bone would not have fractured if LCpl (b)(6) moved (b)(6) not by throat, but in the manner described by witnesses, that is, with one hand behind head and one hand cupped around the chin. Interestingly, LCpl (b)(6) testified that, in a fit of frustration when (b)(6) refused or was unable to comply with directions, he forcefully grabbed (b)(6) around the throat and yelled at him.¹⁵ Later, after (b)(6) was found dead and the rumors were swirling around the camp that he had a broken neck, LCpl (b)(6) as concerned enough to ask Cdr (b)(6) the other 2/25 battalion surgeon, if his actions could have caused (b)(6) death. Consequently, if you accept LTCOL (b)(6) medical opinion that it was the broken hyoid bone that lead to the swollen windpipe which eventually lead to death, then it seems far more likely that LCpl (b)(6) admitted conduct broke the hyoid bone than did LCpl (b)(6) conduct. And if you accept that, then neither LCpl (b)(6) nor Maj Paulus are directly responsible for (b)(6) death as alleged in Charge V and the Specification thereunder.

But what about leaving (b)(6) outside in the hot sun, naked, and in obvious distress? Could it be argued that Maj Paulus had a duty to act to prevent his death and by failing to do so, he negligently caused it. In United States v Russell, 3 USCMA 696, 14 CMR 114 (1954), the court stated, "Negligent homicide is an unlawful killing resulting from simple negligence." (Emphasis added). "Simple negligence is the absence of due care, that is, an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care of the safety of

^{14/} (b)(6) medical history, as provided by his brother (IO Exhibit 40), revealed that he suffered from asthma. According to LCdr (b)(6) extreme stress, such as may be brought on by capture, coupled with the dusty Iraqi environment, could very likely trigger an asthma attack, that left untreated, could result in death.

^{15/} In LCpl (b)(6) sworn statement of 6 July 2003 (IO Exhibit 17), he admits only to grabbing (b)(6) by the neck for two seconds.

others which a reasonably careful person would have exercised under the same or similar circumstances." See MCM Part IV, para. 85.b. MCM Part IV, para. 85.c.(2); see also United States v. Riley, 58 MJ 305, 310 (CAAF 2003); United States v. Robertson, 37 MJ 432, 438 (CMA 1993). "However, not every homicide caused by an act or omission is negligently caused so as to fall under criminal sanction. Criminal sanctions are imposed only if the person committing the act is under a duty to use due care, and the act itself exhibits a lack of that degree of care for the safety of others which a reasonably prudent man would have exercised under the circumstances." United States v. Gargus, 22 MJ 861 (ACMR 1986); see also United States v. Mitchell, 12 M.J. 1015, 1017 (ACMR), pet. denied, 14 M.J. 215 (C.M.A.1982).

Maj Paulus was not specifically charged with negligently causing (b)(6) death by failing to exercise "that degree of care for [his] safety . . . which a reasonably prudent man would have exercised under the circumstances." However, I believe that it was fairly encompassed within the language of Charge V and the Specification thereunder to have reasonably put Maj Paulus on notice that he may have to defend against that specific nuance of the allegation. Moreover, it came out in testimony of the witnesses that had certain reasonable steps been taken, (b)(6) death possibly could have been prevented. In other words, since Maj Paulus had the duty to protect (b)(6) and failed to do so, he arguably could be held criminally liable for his death under a negligent homicide theory. However, despite this available potential option, I believe one fatal flaw exists in the Government's case and that is being able to present credible and reliable medical testimony regarding the cause of death.

In my opinion, the Government's expert pathologist, LTCOL (b)(6) left much to be desired as a witness and expert. She was equivocal at times and easily flustered when confronted with potentially embarrassing oversights, such as 1) using a boilerplate template for her autopsy report and failing to edit it to accurately reflect (b)(6) autopsy; 2) not photographing the broken hyoid bone, which, in her opinion, was the mechanism that directly lead to death; and 3) representing in her curriculum vitae that she is entitled to wear the Combat V device on her Bronze Star when, in fact, she may not. Moreover, no laboratory tests on (b)(6) bodily fluids could be performed because the ice chest in which they were being stored for transit back to Germany was left on the tarmac in the hot Iraqi sun and literally exploded from the expanding gases inside. The lack of reliable medical evidence leaves in doubt the true cause of death or whether intervening and unforeseen criminal acts by others (i.e., Sgt Pittman and LCpl (b)(6) may have been the cause of (b)(6) death. The other factor to consider when deciding whether Maj Paulus was negligently complicit in causing (b)(6) death, is the other very important activities going on within Camp Whitehorse which demanded his attention, specifically, the arrival of the sheik and the anticipated attack of the camp by his supporters. Having been distracted by the impending confrontation with the attackers, Maj Paulus' attention naturally was diverted away from (b)(6) leaving him very little time for reflection and consideration of what to do with (b)(6).

The bottom line is this, while I believe that the Government barely made out a *prima facie* case for negligent homicide on the basis that Maj Paulus failed to exercise due care in getting Mr.

(b)(6) some medical treatment, I think the Government would be hard pressed to gain a conviction at a court-martial given the state of the evidence as summarized immediately above.

6. Disposition Recommendation

I recommend that Maj Paulus be offered non-judicial punishment for negligent dereliction of duty with respect to failing to safeguard the physical health, welfare, and treatment of (b)(6). While Maj Paulus' derelict conduct resulted in the death of a human being, certainly an aggravating factor, I believe his conduct is mitigated by the fact that he was preoccupied with the security of the camp following the intelligence that (b)(6) supporters were planning to possibly stage an attack combined with the favorable positive evidence of the steps he took to ensure the EPWs were generally treated well. For the reasons stated above, I do not believe there is reasonable grounds to believe that Maj Paulus committed any of the remaining charges and thus, I recommend no disciplinary action be taken against him for those offenses.

B. Sgt Pittman

Sgt Pittman is charged with two (2) specifications of willful dereliction of duty (Charge I, Specifications 1 and 2) in violation of Art 92, and five (5) specifications of assault consummated by a battery by striking unknown Iraqi prisoners, (b)(6) and the (b)(6) brothers (Charge II, Specifications 1-5) in violation of Art 128.

I believe probable cause exists for both willful dereliction of duty charges alleged in Charge I, Specifications 1 and 2. I also find that the evidence supports probable cause to believe that Sgt Pittman assaulted (b)(6) and (b)(6) as alleged in Charge II, Specifications 1 and 2. However, I find no credible or reliable evidence to support the remaining assault specifications regarding the (b)(6) brothers alleged in Charge II, Specifications 3-5.

1. Dereliction of Duty as to Iraqi Prisoners (Charge I, Specification 1)

I will not repeat the legal discussion regarding dereliction of duty recited above as it relates to the fact-specific events presented in this Article 32. As far as Sgt Pittman is concerned, the fine legal nuances associated with being derelict based upon having received specialized training is wholly irrelevant. The facts demonstrate that Sgt Pittman intentionally beat and struck (b)(6) and (b)(6) for no reason . . . and this form of misconduct takes no formal training or education to know or understand that it is completely wrong and illegal.

The charge of willful dereliction of duty has three elements: 1) that the accused had certain duties; 2) that the accused knew or reasonably should have known of the duties; and, 3) that the accused was willfully derelict in the performance of those duties. The first two elements are easily proven and not contested by Sgt Pittman. The third element is where the battle will lie principally because the evidence supporting this last element rests entirely upon the testimony of one individual, LCpl (b)(6).

Sgt Pittman was assigned as a detention facility guard almost from the very outset of 2/25 having received the mission of running the Camp Whitehorse detention facility. Sgt Pittman was chosen to be a guard, in large part because of his civilian employment as a corrections officer with the Federal Bureau of Prisons. There appears to be no impropriety by Sgt Pittman until on or about 3 June 2003, when (b)(6) arrived at the facility. Two days later on 5 June 2003, (b)(6) arrived at the camp. According to LCpl (b)(6) Sgt Pittman and he repeatedly struck the sheik in an unprovoked attack and Sgt Pittman twice struck (b)(6) who was hooded and flex-cuffed behind the back.

In addition to this very abusive conduct, several 2/25 Marines, who did not testify, but whose sworn statements were admitted, indicated that Sgt Pittman was often observed treating EPWs in a rough fashion. For example, Sgt Pittman was seen pulling EPWs (who were hooded and flex-cuffed from behind) from the back of Humvees causing them to fall several feet to the ground. The potential for injury was present. Certainly there was a better way to extract these EPWs from the vehicle that would have been more appropriate and less likely to cause injury.¹⁶ See Sworn statement of LCpl (b)(6) of 24 June 2003 (IO Exhibit 24).

This malicious conduct clearly satisfies the third and final element of the offense. It was intentional, thus willful. Since Sgt Pittman was charged with safeguarding the prisoners, the charge of dereliction of duty, as alleged in the Specifications, is complete.

I recommend that Specification 1 under Charge I be modified as follows: 1) that the dates "from on or about mid-April 2003 to on or about 5 June 2003" be substituted for the dates originally alleged "from about 1 April 2003 to about 30 June 2003": 2) that (b)(6) be added as an alleged victim so that the Specification reads, (b)(6) and unknown Iraqi prisoners." These changes, in my opinion, are minor, supported by the evidence, and sufficiently covered by the Specification as originally alleged so as not to require repreferal of the Specification nor reopening the Article 32, especially if the command is considering referral to a general court-martial. With respect to Specification 2 under Charge I, I recommend that the dates of the offense include "from on or about 3 June 2003 to on or about 5 June 2003" vice "from about 4 June 2003" as originally alleged.

^{16/} There was no evidence that any of the EPWs removed from Humvees in this manner suffered any injuries. The real meaning behind this evidence is that it demonstrates how callously Sgt Pittman treated the EPWs and provides some insight into his character.

2. Assaults on (b)(6) and (b)(6) (Charge II, Specifications 1 and 2)

LCpl (b)(6) testified that Sgt Pittman, Sgt (b)(6)¹⁷, and he were tasked with moving (b)(6) from the building where the (b)(6) was initially placed to the south holding building. Once they got the sheik inside the holding building, the three of them began to hit and kick the sheik in the arms and legs for no reason other than pure retribution. This lasted 20 to 30 minutes and occurred on 5 June 2003.

On 4 June 2003 during the 0400-0800 shift, LCpl (b)(6) testified that he was ordered by Sgt Pittman to awaken (b)(6) and the (b)(6). LCpl (b)(6) applied blows to the meaty portions of legs and arms of the brothers to get them to stand on their feet. (b)(6) presented more of a challenge. He simply would not comply. Consequently, LCpl (b)(6) kicked him, used a significant degree of force in applying a pressure point behind the ear, and when this did not work, simply just picked him up. (b)(6) was staggering and moaning and, at one point, got tangled in the concertina wire, requiring Sgt Pittman and LCpl (b)(6) to extract him. (b)(6) was hooded and cuffed behind the back. Sgt Pittman then gave (b)(6) a backhand to the chest causing him to stumble back. (b)(6) muttered "why, why, why . . . my children." Sgt Pittman, in response, stated "what about the children of the soldiers in the 507 ambush." Then, LCpl (b)(6) saw Sgt Pittman land a karate kick to (b)(6) chest.¹⁸ This summarizes the essential facts that support the allegations in Specifications 1 and 2 of Charge II.

There are only two elements for the offense of assault consummated by a battery. They are: 1) that the accused did bodily harm to a certain person; and, 2) that the bodily harm was done with unlawful force or violence. "Bodily harm" is defined as any offensive touching of another, however slight. See Art. 128.c.(1)(a).

Clearly, the assaults upon the (b)(6) and (b)(6) caused bodily harm, as that term is defined, and were done with unlawful force or violence. There was no excuse or legal justification for Sgt Pittman's conduct . . . absolutely none.

^{17/} Sgt (b)(6) was not the subject of this Article 32 and it is my understanding that he was pending a special court-martial which, at the time of this Article 32, was being considered for dismissal or withdrawal of the charges. Whether the command wants to revisit that decision based upon the testimony of LCpl (b)(6) is beyond the scope of this report.

^{18/} LCpl (b)(6) did not see the beginning, or wind up, of this kick. He only saw it land. So he cannot say what (b)(6) may have done, if anything, to provoke the kick. I will emphasize that (b)(6) was hooded and cuffed so it is difficult to comprehend a scenario that would justify Sgt Pittman's move as self-defensive.

There is absolutely no evidence that Sgt Pittman assaulted the (b)(6) brothers as charged in Specifications 3-5 of Charge II. In fact, the brothers identified LCpl (b)(6) in a photographic lineup as the individual who struck them. See IO Exhibits 20, 21, and 22.

3. Disposition Recommendation

I recommend that Sgt Pittman be taken to a special court-martial for two specifications of willful dereliction of duty as to (b)(6) and (b)(6) in failing to safeguard their physical health, welfare, and treatment, for two specifications of maltreatment of (b)(6) and Mr. (b)(6) and two specifications of assault consummated by a battery upon (b)(6) and (b)(6).

There is one caveat. As mentioned above, there is one, and only witness, to these events regarding Sgt Pittman and his cruelty towards (b)(6) and (b)(6), and that, of course, is LCpl (b)(6). The Government's entire case possibly may rest upon LCpl (b)(6). Legally, this is sufficient. Factually, if any of the charges are referred to a court-martial, whether the trier of fact would be willing to rest a conviction upon the word of one individual is entirely a different matter.

I found LCpl (b)(6) to be credible and his testimony sufficiently detailed to prove the case against Sgt Pittman beyond a reasonable doubt. However, the government will have to contend with the fact that LCpl (b)(6) has made inconsistent statements minimizing his and others' conduct or outright denying that unprovoked physical violence ever occurred against an EPW. See LCpl (b)(6) sworn statement of 6 July 2003 (IO Exhibit 17). Nonetheless, in such a high profile case, the command must fully understand that the prosecution would stand or fall upon the testimony of just one witness and be prepared for the risks and potentiality for an acquittal. LCpl (b)(6) was charged with some very serious offenses and, by his own admission, his testimony revealed that he had committed other offenses not listed in his charge sheet, such as, the assault upon (b)(6) and possibly the negligent homicide of (b)(6). He cut a deal with the Government to cooperate against his co-accuseds and in exchange, he received NJP and was reduced to PFC, an extremely lenient "sentence" for his admitted conduct. Any defense attorney worth his/her

^{19/} The prosecution did not originally charge Sgt Pittman with maltreatment in violation of Article 93, but I find the facts amply support such a charge.

^{20/} LCpl (b)(6) also testified that Sgt (b)(6) also was present and participated in the beating of the sheik. Sgt (b)(6) did not testify on the advice of counsel. Whether Sgt (b)(6) is available as a witness now or will be later may be an important factor in determining whether there is sufficient credible and reliable evidence to go forward on either the dereliction or especially the assault charges. Without knowing what Sgt (b)(6) will say or whether he will corroborate or refute LCpl (b)(6) testimony, it is difficult to assess the true strength of the Government's case.

salt would have a field day cross-examining LCpl (b)(6) just on the deal that he negotiated let alone the facts of the case. I'm certain that LCpl (b)(6) credibility would, at the very least, be shaken, perhaps not destroyed, but shaken. Whether his veracity would be damaged enough to create reasonable doubt is anyone's guess.

I recognize that there are some that might argue that his conduct warrants treatment at a general court-martial, especially since it was intentional and malicious, and with respect to (b)(6) may have contributed to his death.²¹ I wrestled with which forum was most appropriate to resolve these offenses and came down on the side of the lesser forum primarily because of a proportionality concern. What I mean is this: LCpl (b)(6) was allowed to resolve his case at an NJP. His conduct was every bit as egregious as Sgt Pittman's and possibly worse, since he confessed that he put a strong choke hold on (b)(6) and was later concerned that this may have lead to the man's death. I understand that LCpl (b)(6) was willing to step up and cooperate, something Sgt Pittman did not do, and that this act of contrition is worth something. Was his assistance worth pleading his case down to an NJP was not my call to make and I make no judgments whether it was the right thing to do. However, from an outsider's perspective, members on a court-martial may be incensed that LCpl (b)(6) received such a charitable deal while Sgt Pittman who is "less" culpable is being subjected to the most serious forum and potentially facing many years in prison.

Given that the Government's case literally depends upon one witness, a witness who has every motivation to curry and remain in favor with the Government, and because when considered objectively, what Sgt Pittman did, while bad, is not so bad to warrant the most serious treatment at a general court-martial, I recommend a special court-martial as the most appropriate forum.

C. LCpl (b)(6)

LCpl (b)(6) is charged in Charge I with one Specification of willful dereliction of duty, in violation of Article 92, one Specification under Charge II with maltreatment, in violation of Article 93, three specifications of aggravated assault or assault consummated by a battering under Charge III, in violation of Article 128, and in Charge IV, one specification of negligent homicide in violation of Article 134. All of the preferred charges and specifications surround the 5 June 2003 "dragging incident" of (b)(6). As I have adequately summarized this event and LCpl (b)(6) involvement in it above, I will not do so again here. Suffice it to say, that I found no credible or reliable evidence to support any of the charges. In fact, the testimony that

^{21/} If a general court-martial is contemplated, the Article 32 will have to be reopened to consider the additional charge of maltreatment if the command wants to include this offense. Because the underlying conduct supporting the maltreatment violation is so closely related to the dereliction of duty offenses and the assaults, I would recommend against reopening the Article 32 for this reason alone because it is quite possible that the offenses are multiplicitous for sentencing as well as findings.

was received tended to show that LCpl (b)(6) treated (b)(6) humanely and carefully while moving him from the holding building to the outside holding pen.²² Accordingly, I recommend no disciplinary or administrative action be taken against LCpl (b)(6).

IV. CONCLUSION

I acknowledge that the commander generally is responsible for all that his unit does or fails to do. I further acknowledge that there are some who would argue that Maj Paulus, as the OIC of the detention facility, should be the one ultimately held accountable for (b)(6) death and the mistreatment generally of any Iraqi EPWs. Finally, I acknowledge that others may argue that if anyone should defend themselves at a court-martial, it ought to be Maj Paulus. Normally I would agree with all of these assertions. However, the unique facts of this case demonstrate that Maj Paulus was kept in the dark about the treatment EPWs received and the intentional, deliberate, and malicious criminal acts of Sgt Pittman, LCpl (b)(6) and (b)(6) inflicted upon (b)(6) and (b)(6). Maj Paulus should not be held accountable for acts not reasonably foreseeable by him.

^{22/} I acknowledge, as I have stated before, that the written statements provided by various witnesses are, to varying degrees, in conflict with the Article 32 testimony. However, most, if not all, of the witnesses have backed away from the accuracy and/or truthfulness of these statements obtained by NCIS during the early phases of the investigation.



UNITED STATES MARINE CORPS
1ST MARINE DIVISION (REIN)
BOX 555380
CAMP PENDLETON, CA 92055-5380

IN REPLY REFER TO:
5813
LSST-E
20 Oct 03

From: Commanding General
To: Colonel W.V. Gallo, U.S. Marine Corps Reserve

Subj: FORMAL PRETRIAL INVESTIGATION IN THE CASES OF UNITED STATES V. MAJOR
(b)(6) USMCR; SERGEANT G.P. PITTMAN, (b)(6)
USMCR; LANCE CORPORAL (b)(6)

Ref: (a) Article 32, UCMJ
(b) R.C.M. 405, Manual for Courts-Martial, United States (MCM) (2000 Ed.)
(c) R.C.M. 707(c)(1), MCM (2000 Ed.)

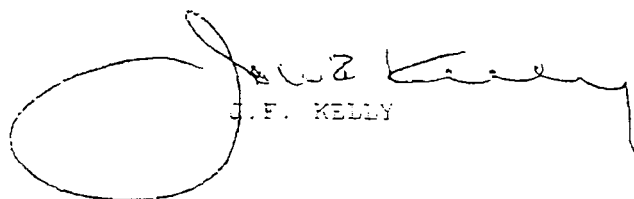
Encl: (1) DD Form 458 (Charge Sheet) of Maj W.E. Vickers
(2) DD Form 458 (Charge Sheet) of Sgt G.P. Pittmann
(3) DD Form 458 (Charge Sheet) of LCpl W.S. Roy

1. Pursuant to the references (a) and (b), you are hereby appointed to conduct a formal pretrial investigation into the charges and specifications contained in the enclosures. As Investigating Officer you will conduct your investigation in accordance with these references. You are directed to ensure that this investigation is scheduled to be conducted within 15 days of the date of this appointment letter.

2. Pursuant to reference (c), you are authorized to grant continuance requests. Following conclusion of the hearing on this matter, if circumstances prevent completion of your report within 15 days, you are to notify me directly.

3. Upon completion of this investigation, make a formal report, including therein your recommendations for the disposition of the subject cases. In your report, include a copy of any requests for delay.

4. Captain J.M. McCall, USMC, has been detailed to serve as trial counsel for the Government.


J.F. KELLY

MEMORANDUM OF AGREEMENT

between

Commanding General

Marine Corps Base

Camp Pendleton, California

and

Commanding General, 1st Marine Division (Rein)

Camp Pendleton, California

1. Purpose. The purpose of this Memorandum of Agreement (MOA) is to memorialize the request of the Commanding General, 1st Marine Division (Rein) to the Commanding General, Marine Corps Base (MCB), to act as the general court-martial authority for the Marines and Sailors assigned to the 1st Marine Division (Rein) who will not be deploying to Iraq. This MOA is for the internal management of 1st Marine Division and MCB Camp Pendleton and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any person. This MOA is not prescribed to protect an accused's rights. This policy is promulgated primarily for the purpose of assuring efficient allocation of military resources.
2. Background. This MOA is necessitated by the deployment of the Commanding General, 1st Marine Division (Rein) and several subordinate commands to Iraq.
3. Parties. The parties to this agreement are the Commanding General, Marine Corps Base, and the Commanding General, 1st Marine Division. The Commanding General, MCB Camp Pendleton, and the Commanding General, 1st Marine Division are both General Court-Martial Convening Authorities (GCMCAs). This agreement is not intended to alter the provision of legal service support provided to 1st Marine Division units by the Legal Service Support Section (LSSS), 1st Force Service Support Group (1st FSSG), or that provided to MCB Camp Pendleton, under a previously existing Memorandum of Agreement between 1st FSSG and MCB Camp Pendleton.
4. Definitions. The phrases "general court-martial convening authority" and "general court-martial authority" as used in this MOA include, but are not limited to, actions related to courts-martial and separation authority as provided in the Marine Corps Separation and Retirement Manual (MARCORSEPMAN). Personnel of the 1st Marine Division (Rear) include all personnel and units not forward deployed with 1st Marine Division (Main), including personnel and units at Camp Pendleton and Twentynine Palms, California. The parties intend the above-quoted phrases receive the broadest possible interpretation and include all of those actions pertaining to administration and military justice that a general officer commanding, or other officer succeeding to that command, customarily or ordinarily takes upon the advice or with the assistance of a Staff Judge Advocate.

5. Scope.

a. Courts-Martial. The Commanding General, MCB Camp Pendleton, will take all military justice actions normally taken by the Commanding General, 1st Marine Division, with the advice of the Staff Judge Advocate, MCB Camp Pendleton. This includes convening, referral, and post-trial actions required by the Manual for Courts-Martial for all cases in which any such action is required after the effective date of this agreement, or in any other case in which it is impracticable for the Commanding General, 1st Marine Division, to act. It is not contemplated that the Commanding General, MCB Camp Pendleton, will bear the funding responsibility for the costs of providing necessary legal services for general courts-martial which MCB convenes on behalf of the 1st Marine Division, to include victim-witness assistance, travel, witness fees, per diem, lodging, and evidence and reproduction costs. These costs will be reimbursable by 1st Marine Division.

b. Nonjudicial Punishment. The Commanding General, MCB Camp Pendleton, will act as the appeal authority for all nonjudicial punishment appeals submitted pursuant to Article 15, UCMJ, for the 1st Marine Division personnel and units covered by this agreement.

c. Administrative Separations. The Commanding General, MCB Camp Pendleton, will act as the GCMCA for all administrative separations requiring GCMCA action for the 1st Marine Division units and personnel covered by this agreement.

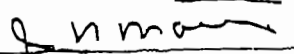
d. Officer Misconduct. The Commanding General, MCB Camp Pendleton will monitor and report all officer misconduct for the 1st Marine Division units and personnel covered by this agreement.

e. JAGMAN investigation. The Commanding General, MCB Camp Pendleton will act as the GCMCA on all JAGMAN investigations required to be forwarded to a GCMCA pursuant to the Manual of the Judge Advocate General. MCB will also provide civil law services and claims processing, to include supervising attorneys for litigation report investigations, to the 1st Marine Division units covered by this agreement.

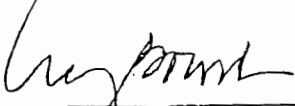
f. Legal Assistance. Legal assistance services to the 1st Marine Division units, personnel, and their families, already provided (per separate MOA) by the Joint Legal Assistance Office, MCB Camp Pendleton, will continue under this agreement.

g. Other GCMCA Actions. The Commanding General, MCB Camp Pendleton, will act as the GCMCA for Article 1150 complaints pursuant to the U.S. Navy Regulations (1990), Article 138, UCMJ, complaints, requests mast, and enlisted administrative reductions, and will take such other necessary legal or administrative actions upon request by the Commanding General, 1st Marine Division.

6. Duration. This MOA will take effect upon oral or written notification by the Commanding General, 1st Marine Division (or his designee) to the Commanding General, MCB Camp Pendleton. It is intended that the MOA will remain in effect as long as it is impracticable for the Commanding General, 1st Marine Division (Rein) to act as the GCMCA for the personnel and units covered by this agreement due to the deployment of the 1st Marine Division (Main).


J. N. MATTIS
Major General, USMC
Commanding
1st Marine Division (Rein)

Date: FEB 02 2004


W. G. BOWDON
Major General, USMC
Commanding
Marine Corps Base

Date: 9 FEB 04

Copy to:

AC/S, G-1, 1st MarDiv
AC/S, Comptroller, 1st MarDiv
SJA, 1st MarDiv
SJA, MCB
OIC, LSSS
Inspector, 1st MarDiv
Inspector, MCB

RECORD OF TRIAL CHECKLIST

CASE OF: Sergeant G. P. Pittman

DATE OF TRIAL: 29 Apr; 28 Jun; 8, 28 Jul; 9, 17, 23-27, 30-31
Aug, 1-3 Sept 2004.

- LF 1. Cover Sheet (Blue)
2. Appellate Rights Form and Special Power of Attorney, or Waiver of Appellate Rights (If applicable)
- NA 3. Deferment Request and Endorsement thereon (If applicable)
- LF 4. Complete Article 32 Investigation and Article 34 Advice, or waivers thereof (GCM only)
- LF 5. Original Convening Order and all modifications thereto
- LF 6. Record reflects persons present, and qualifications for TC, DC an MJ
- NA 7. Record reflects waiver of 3/5 day waiting period (If applicable)
- LF 8. Military judge announced the court-martial was assembled
- NA 9. Request for enlisted members attached as appellate exhibit (If applicable)
- NA 10. Request for individual military counsel attached as appellate exhibit (If applicable)
- LF 11. Original Charge Sheet
- LF a. Minor changes initialed by TC
- LF b. Data as to restraint correct
- LF 12. Record reflects any motions made, or fact there were no motions
- LF 13. Pleas and Findings in proper form and present for each specification
- NA 14. Pretrial Agreement included as appellate exhibit (If applicable)
- LF 15. Sentence in proper form
- NA 16. Any recommendation by MJ as to sentence included (If applicable)
- LF 17. Record reflects explanation and understanding of Post-trial rights
- LF 18. Pages consecutively numbered and present
19. All exhibits present and in proper order
20. Exhibits either originals, certified copies, or true descriptions or photos (Need forms indicating exhibit not present was not offered. For Francis, PCS + DEB. LF)
- NA 21. Remarks

Date: 050124

L. J. Francis
Maj L. J. Francis

R E C O R D O F T R I A L

of

Gary P. Pittman

(b)(6)

Sergeant

HqBn, 1st MarDiv

USMC

Camp Pendleton, CA

By

General Court-Martial

Convened by Commanding General

Marine Corps Base

Tried at

Camp Pendleton, California, on 29 Apr; 28 Jun; 8 , 28 Jul; 9, 17,
23-27, 30-31 Aug, 1-3 Sept 2004

=====

C O P I E S O F R E C O R D

_____ copy of record furnished the accused or defense counsel as
per attached certificate or receipt.

_____ copy (ies) of record forwarded herewith.

R E C E I P T F O R C O P Y O F R E C O R D

I hereby acknowledge receipt of a copy of the record of trial of
United States v's. Sergeant G. P. Pittman , delivered to me at
_____ this ____ day of
_____, _____.

I do / do not have matters to submit pursuant to R.C.M. 1105 and
1106 MCM, 2000.

Capt W. A. Folk,
U.S. Marine Corps

PROCEEDINGS OF A GENERAL COURT-MARTIAL

The military judge called the Article 39(a) session to order at Camp Pendleton, California, in the case of the *United States* versus Sergeant G. P. Pittman, U.S. Marine Corps, at 0811, 29 April 2004, pursuant to the following order:



UNITED STATES MARINE CORPS
MARINE CORPS BASE
BOX 555010
CAMP PENDLETON, CALIFORNIA 92055-5010

5811
SJA/MJO
Ser 2-03
5 JUN 2003

A general court-martial is hereby convened. It may proceed at Marine Corps Base, Camp Pendleton, California, to hear all cases properly referred to it for trial. The court-martial will be constituted as follows:

MEMBERS

Colonel Pamela A. Brills, U.S. Marine Corps;
Colonel John A. Terrell, U.S. Marine Corps;
Lieutenant Colonel Esta L. Staples, U.S. Marine Corps;
Lieutenant Colonel Marcelino Hernandez, U.S. Marine Corps;
Lieutenant Colonel Christopher B. Houser, U.S. Marine Corps;
Major Peter B. Davis, U.S. Marine Corps;
Lieutenant Commander Joell Lowther, U.S. Navy Reserve;
Major Stephen A. Simpson, U.S. Marine Corps;
Major Lyle D. Hague, U.S. Marine Corps;
Captain Eric S. Black, U.S. Marine Corps;
Captain K. D. Marcussen, U.S. Marine Corps; and
Chief Warrant Officer-3 Richard Caplan Jr., U.S. Marine Corps.

All cases referred to General Court-Martial Convening Order 1-03 this headquarters, dated 24 February 2003, in which proceedings have not yet begun, will be brought to trial before the court-martial hereby convened.

W. G. BOWDON
Major General
U.S. Marine Corps
Commanding General

Certified True Copy
[Signature] 040428



UNITED STATES MARINE CORPS
OFFICE OF THE STAFF JUDGE ADVOCATE
1st MARINE DIVISION (REIN)
BOX 555380
CAMP PENDLETON, CALIFORNIA 92055-5380

5811
SJA/MJO
Ser #2b-03
20 Aug 04

Pursuant to Section 0136 of the Manual of the Judge Advocate General and Rule for Courts-Martial 505(c)(1)(B), the general court-martial convened by convening Order Serial #2-03, dated 5 June 2003, as modified by convening Order Serial #2a-03, dated 18 August 2004 is hereby modified in the case of United States v. Sergeant Gary P. Pittman (b)(6) U.S. Marine Corps Reserve, only. The court-martial will be constituted as follows:

EXCUSED:

Major Jon M. Sablan, U.S. Marine Corps; and
Chief Warrant Officer-2 Clint J. Bickle.

MEMBERS:

Colonel James J. Coghlan, U.S. Marine Corps Reserve, President;
Colonel Oliver M. Grant, U.S. Marine Corps Reserve;
Colonel Carl Shelton Jr., U.S. Marine Corps;
Lieutenant Colonel John S. Duda, U.S. Marine Corps;
Lieutenant Colonel Robert Davis, U.S. Marine Corps;
Lieutenant Colonel Arthur Britton Jr., U.S. Marine Corps Reserve;
Lieutenant Colonel Robert Sprague, U.S. Marine Corps Reserve;
Major George M. Ellis, U.S. Marine Corps;
Captain Alexander Gilbert, U.S. Marine Corps;
Captain Lawrence Goshen, U.S. Marine Corps;
Captain Douglas R. Cullins, U.S. Marine Corps;
Captain Christopher J. Thomas, U.S. Marine Corps; and
First Lieutenant Richard S. Maidens, U.S. Marine Corps Reserve.

T. G. Scully
T. G. SCULLY

Colonel
U.S. Marine Corps Reserve
Staff Judge Advocate

Copy to:
Each member

CERTIFIED TRUE COPY
Kindred
TRAC COUNCIL



UNITED STATES MARINE CORPS
MARINE CORPS BASE
BOX 555010
CAMP PENDLETON, CALIFORNIA 92055-5010

5811
SJA/MJO
Ser #2a-03
18 Aug 04

The general court-martial convened by convening Order Serial #2-03, dated 5 June 2003, is hereby modified in the case of United States v. Sergeant Gary P. Pittman (b)(6) U.S. Marine Corps Reserve, only. The court-martial will be constituted as follows:

DELETE:

Colonel Pamela A. Brills, U.S. Marine Corps;
Colonel John A. Terrell, U.S. Marine Corps;
Lieutenant Colonel Christopher B. Houser, U.S. Marine Corps;
Lieutenant Colonel Esta L. Staples, U.S. Marine Corps;
Lieutenant Colonel Marcelino Hernandez, U.S. Marine Corps;
Major Peter B. Davis, U.S. Marine Corps;
Lieutenant Commander Joell Lowther, U.S. Navy Reserve;
Major Stephen A. Simpson, U.S. Marine Corps;
Major Lyle D. Hague, U.S. Marine Corps;
Captain Eric S. Black, U.S. Marine Corps;
Captain Kjell D. Marcussen, U.S. Marine Corps; and
Chief Warrant Officer-3 Richard Caplan Jr., U.S. Marine Corps

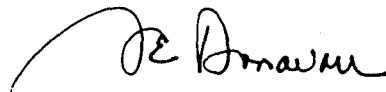
ADD:

Colonel James J. Coghlan, U.S. Marine Corps Reserve;
Colonel Oliver M. Grant, U.S. Marine Corps Reserve;
Colonel Carl Shelton Jr., U.S. Marine Corps;
Lieutenant Colonel John S. Duda, U.S. Marine Corps;
Lieutenant Colonel Robert Davis, U.S. Marine Corps;
Lieutenant Colonel Arthur Britton Jr., U.S. Marine Corps Reserve;
Lieutenant Colonel Robert Sprague, U.S. Marine Corps Reserve;
Major George M. Ellis, U.S. Marine Corps;
Major Jon M. Sablan, U.S. Marine Corps;
Captain Alexander Gilbert, U.S. Marine Corps;
Captain Lawrence Goshen, U.S. Marine Corps;
Captain Douglas R. Cullins, U.S. Marine Corps;
First Lieutenant Christopher J. Thomas, U.S. Marine Corps;
First Lieutenant Richard S. Maidens, U.S. Marine Corps Reserve; and
Chief Warrant Officer-2 Clint J. Bickle.

CERTIFIED TRUE COPY
[Signature]
True Copy

MEMBERS:

Colonel James J. Coghlan, U.S. Marine Corps Reserve, President;
Colonel Oliver M. Grant, U.S. Marine Corps Reserve;
Colonel Carl Shelton Jr., U.S. Marine Corps;
Lieutenant Colonel John S. Duda, U.S. Marine Corps;
Lieutenant Colonel Robert Davis, U.S. Marine Corps;
Lieutenant Colonel Arthur Britton Jr., U.S. Marine Corps Reserve;
Lieutenant Colonel Robert Sprague, U.S. Marine Corps Reserve;
Major George M. Ellis, U.S. Marine Corps;
Major Jon M. Sablan, U.S. Marine Corps;
Captain Alexander Gilbert, U.S. Marine Corps;
Captain Lawrence Goshen, U.S. Marine Corps;
Captain Douglas R. Cullins, U.S. Marine Corps;
First Lieutenant Christopher J. Thomas, U.S. Marine Corps;
First Lieutenant Richard S. Maidens, U.S. Marine Corps Reserve; and
Chief Warrant Officer-2 Clint J. Bickle.



T. E. DONOVAN
Major General
U.S. Marine Corps
Commanding General

Copy to:
Each member

CERTIFIED TRUE COPY
W. D. Flood
TRIAL COUNSEL

PERSONS PRESENT

MILITARY JUDGE: Maj D. M. Jones
TRIAL COUNSEL: Maj L. J. Francis
DEFENSE COUNSEL: Capt W. A. Folk

The members were absent.

The accused, Sergeant G. P. Pittman, U. S. Marine Corps, was present and attired in the appropriate uniform and was entitled to wear the Combat Action Ribbon, Naval Unit Citation, the Armed Forces Reserve Medal, the Humanitarian Service Medal, Presidential Unit Citation with star in lieu of second award, Southwest Asia Service Medal, the Sea Service Deployment Ribbon with four stars in lieu of fifth award, the National Defense Service Medal with star in lieu of second award, Marine Corps Good Conduct Medal, the Kuwait Liberation Medal, Selected Marine Corps Reserve Medal, the Navy Achievement Medal, the Army Good Conduct Medal, the Army Achievement Medal, Marine Corps Expeditionary Medal with star in lieu of second award, Army Overseas Service Ribbon.

Sergeant D. Cherry, U.S. Marine Corps, the detailed court reporter who had been previously sworn, was present.

The trial counsel announced his legal qualifications and status as to oath, that he had detailed himself to this court-martial as the OIC of Legal Teams Echo and Delta, and that has acted in no disqualifying capacity.

The detailed defense counsel announced his legal qualifications and status as to oath, that he had been detailed by the Senior Defense Counsel, Legal Services Support Team Echo, that he had acted in no disqualifying capacity, and that no other defense counsel had been detailed to the case.

The military judge advised the accused of his rights concerning counsel as set forth in Article 38(b) and R.C.M. 901(d).

The accused stated that he understood his rights with respect to counsel and that he chose to be defended solely by Captain Folk, his detailed defense counsel.

The military judge stated his legal qualification and status as to oath and that he had been detailed by the Circuit Military Judge of the Sierra Judicial Circuit, Navy-Marine Corps Trial Judiciary. The prosecution and the accused were extended the right to challenge the military judge for cause. The military judge was

not challenged for cause.

Pursuant to Appellate Exhibit I, the accused was allowed to reserve his pleas and forum selection until 28 July 2004.


Commanding General, Marine Corps Base, Camp Pendleton convened the court-martial and referred the charges and specifications to it.

The Article 39(a) session recessed at 0828, 29 April 2004.

AUTHENTICATION OF THE RECORD OF TRIAL

in the case of

Sergeant G. P. Pittman, (b)(6) U.S. Marine Corps,
Headquarters Battalion, Marine Corps Base, Camp Pendleton,
California 92055



D. M. JONES
LtCol, U.S. Marine Corps
Military Judge

050218

The Article 39(a) session was called to order at 0907, 28 Jun 2004.

The court was called to order. The military judge from the previous session was replaced by Colonel R. S. Chester. Colonel Chester stated his legal qualification and status as to oath and that he detailed himself to this court-martial in his capacity as the Circuit Military Judge of the Sierra Judicial Circuit. The prosecution and the accused were extended the right to challenge the military judge for cause. The military judge was not challenged for cause.

The court reporter from the previous session was replaced by Staff Sergeant Wyss, who had been previously sworn.

The civilian counsel, Mr. J. W. Tranberg, announces his legal qualifications and status as to oath.

The accused stated that it was his desire to be represented by both Captain Folk and Mr. Tranberg.

The defense made a motion to compel discovery, Appellate Exhibit XII. The government's response to the motion is Appellate Exhibit XIII. The defense offered Appellate Exhibit XXIII, Appellate Exhibit XXV, and Appellate Exhibit XXXIII as evidence to consider on the motion. The government offered Appellate Exhibit XVIII as evidence to consider on the motion.

The defense made argument on the motion.

The government made argument on the motion.

The military judge did not rule on the motion at this time.

The defense made a motion for appropriate relief, Appellate Exhibit X. The government's response to the motion is Appellate Exhibit XI.

[End of Page]

The defense motion was granted by the military judge. However, the military judge required the government to provide a reasonable substitute for Dr. Brian Peterson.

The defense made a motion for appropriate relief, Appellate Exhibit VIII. The government's response to the motion is Appellate Exhibit IX. The defense offered Appellate Exhibit XXXIV and XXXV as evidence on the motion.

The defense made argument on the motion.

The government made argument on the motion.

The military judge determined that the motion was not ripe and that he could rule on the motion.

The government made a motion for a preliminary ruling on evidence, Appellate Exhibit IV. The defense's response to the motion is Appellate Exhibit V. The government offered Appellate Exhibits XV and XVI as evidence on the motion.

The military judge denied the government's motion, Appellate Exhibit IV.

The Article 39(a) session recessed at 1309, 28 Jun 2004.

The Article 39(a) session was called to order at 1024, 8 Jul 2004.

The court was called to order. All parties present at the previous session were once again present.

The military judge summarized an 802 conference prior to coming on the record. The military judge signed a protective order, Appellate Exhibit XXXVIII.

The defense was provided a bill of particulars, Appellate Exhibit XXXVI.

Dr. Green has been made available to the defense team as an investigative assistant as an adequate substitute for Dr. Brian Peterson. His curriculum vita is attached as Appellate Exhibit XXXVII. The defense stated that they were satisfied with him.

Appellate Exhibit XXXIX, a synopsis of expected testimony, was provided to the military judge by the defense to assist in the military judge in making a ruling on the defense's motion for appropriate relief, Appellate Exhibit VIII.

The defense made argument on the motion.

The government made argument on the motion.

The request to produce Major (b)(6) was withdrawn by the defense. The military judge granted the defense's request with respect to Lieutenant Colonel (b)(6) Sergeant (b)(6) and Major (b)(6). The military judge denied the defense's request with respect to Captain (b)(6) and Major Paulus. The military judge did not rule on the request for production of Major (b)(6) since the government intended on calling him as a witness in the trial.

The defense's request to produce evidence, Appellate Exhibit XII, the military judge denied the production of Lance Corporal (b)(6) medical records. As to the records requested by the defense with respect to (b)(6) the request was granted, with the exception of the transcripts of the court proceedings.

The defense made a motion for appropriate relief, Appellate Exhibit XL.

The military judge granted the defense's motion.

The government made a motion for a preliminary ruling on evidence, Appellate Exhibit II. The defense's response to the motion is Appellate Exhibit III. The government offered Appellate Exhibit XXV as evidence on the motion.

The government made argument on the motion.

The defense made argument on the motion.

The military judge denied the government's request to offer the evidence in its case in chief. The military judge did not rule on the admissibility of the 404b information as it pertains to the rebuttal case.

The Article 39(a) session recessed at 1142, 8 Jul 2004.

The Article 39(a) session was called to order at 0944, 28 Jul 2004.

All parties present when the court last recessed were once again present with the exception of the court reporter, Sergeant Cherry, who has previously been sworn. Captain Hood, the assistant trial counsel, was also present.

The assistant trial counsel announced his legal qualifications and

status as to oath and that he had acted in no disqualifying manner.

The defense made a motion for appropriate relief, Appellate Exhibit XLVII. The government's response was marked as Appellate Exhibit XLVIII. The government provided Appellate Exhibit XLIX as evidence on the motion. The defense offered Appellate Exhibit XXII as evidence on the motion.

The government made argument on the motion.

The defense made argument on the motion.

The military judge stated that he would not pre-admit the photos until the trial counsel could lay a proper foundation, with the exception of pages 10 and 11. The military judge did not see any relevance to those two pages.

Appellate Exhibit LI was provided as evidence on the defense's discovery request, Appellate Exhibit XLIII. The military judge stated that he would treat this as a motion to compel. The military judge stated he believed the defense has made its case with regard to Article 7; but as to Article 3, they have not. As to Article 3, the request was denied.

The Article 39(a) session recessed at 1058, 28 July 2004.

The Article 39(a) session was called to order at 0931, 9 Aug 2004.

The court was called to order. All those present when the court last recess were again present with the exception of Captain Hood. The court reporter for this session was Sergeant Grismore who was previously sworn.

The military judge summarized an 802 conference prior to coming on the record. There was a discussion of a defense motion to merge a couple of the charges, Appellate Exhibit LIV. The government has agreed to do that. So the defense motion was granted by the military judge.

The defense made a motion for appropriate relief, Appellate Exhibit LII. The government's response was marked as Appellate Exhibit LIII.

The military judge directed the government to find out when Sergeant (b)(6) medical records were mailed to the government or have them re-mailed so they could get here in a timely fashion. As to the criminal background check on

(b)(6) the military judge ruled that since the government was not calling (b)(6) as a witness, these documents would not be necessary. However, the military judge did state that he would hold the government to their representation that they would not elicit from anyone statements about any interaction he may have had with the accused while he may have been acting as a federal prison guard.

The government submitted Appellate Exhibit LVI for the court to take judicial notice of Geneva Convention Protocol I, III, IV, as well as DoD Directive 5100.77 dated 9 December 1998 and requested these documents be pre-admitted as evidence. The defense indicated that they had no objection to it, but reserved any objections as to whether or not the evidence should go before the members. The military judge, therefore, admitted Prosecution Exhibits 1 through 4. The words "for identification" were deleted.

The defense made a motion for appropriate relief, Appellate Exhibit LX. The government's response was marked as Appellate Exhibit LXI. The government offered Appellate Exhibit XXI, LVIII, LIX, and LXIII as evidence on the motion. The defense offered Appellate Exhibit XV and LXII as evidence on the motion.

The military judge did not rule on the motion and stated that he wanted to read the appellate exhibits offered on the motion before he heard argument.

The defense made a motion for appropriate relief, Appellate Exhibit LV.

The defense made argument on the motion.

The government made argument on the motion.

The military judge denied a deposition of Sergeant (b)(6) but ordered that Sergeant (b)(6) must submit to an interview by the defense.

The court took a brief recess to read the evidence in regards to the defense motion for appropriate relief, Appellate Exhibit LX.

The defense made argument on the motion.

The government made argument on the motion.

The military judge denied the defense's motion, Appellate Exhibit LX.

The Article 39(a) session recessed at 1122, 9 Aug 2004.

The Article 39(a) session was called to order at 0932,
17 Aug 2004.

The court was called to order. All those present when the court last recess were again present with the exception of Captain Hood, who was also present. The court reporter for this session was Staff Sergeant Wyss who was previously sworn.

The military judge summarized an 802 conference held prior to coming on the record.

The defense made a motion for appropriate relief, Appellate Exhibit LXIV. The government's response was marked as Appellate Exhibit LXV. The defense offered Prosecution Exhibit 4 as evidence on the motion.

The defense made argument on the motion.

The government made argument on the motion.

The military judge ruled that paragraphs 1 through 3 on page 8 of Appellate Exhibit LXIV were denied. Paragraphs 4 through 13 on pages 8 and 9 of Appellate Exhibit LXIV were granted.

The defense made a motion for appropriate relief, Appellate Exhibit LXVIII.

The defense made argument on the motion.

The government made argument on the motion.

The military judge ruled that the defense's motion was denied.

The defense made a motion in limine, Appellate Exhibit LXVI. The government's response was marked as Appellate Exhibit LXVII. The defense offered Appellate Exhibits XXV and LXXIV as evidence on the motion.

The defense made argument on the motion.

The government made argument on the motion.

The military judge ruled that the defense's motion was denied.

The military judge, trial counsel, and defense counsel went over the proposed voir dire, Appellate Exhibits LXXII and LXXIII.

The defense objected to items I through M in Appellate Exhibit LXXII. The military judge sustained the defense's objection to those items, to include items F and O.

The government objected to question 4H. The military judge sustained the objection to that question. The government objected to question 4J. The military judge overruled the objection to that question. The government objected to question 4L. The military judge overruled the objection to that question. The government objected to question 8E, 8I, and 8J. The military judge sustained the objection to question 8I and overruled the objection to question 8E and 8J. The government objected to the question 8L with regard to the language "for the defense." The defense had no objection to removing that language from the question. The military judge allowed the defense to ask the question minus the language "for the defense."

The Article 39(a) session recessed at 1058, 17 Aug 2004.

The Article 39(a) session was called to order at 0908, 23 Aug 2004.

The court was called to order. All parties present when the court last recessed were once again present.

The defense made a motion for appropriate relief, Appellate Exhibit LXIX. The government's response was marked as Appellate Exhibit LXXIX. The defense offered the summary of expected testimony of Dr. Peterson as evidence on the motion.

The defense made argument on the motion.

The government made argument on the motion.

The military judge ruled that the defense's motion was granted.

The accused waived the reading of the charges and specifications.

The accused was arraigned on the following charges and specifications:

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) Pittman, Gary P.		2. SSN (b)(6)		3. RANK/RATE Sgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION HqBn, 1 st MarDiv, Camp Pendleton, CA 92055-5380				6. CURRENT SERVICE	
				a. INITIAL DATE 26 May 03	b. TERM 4 yrs
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED		
a. BASIC 2367.90 \$2283.30	b. SEA/FOREIGN DUTY None.	c. TOTAL 2367.90 \$2283.30	Not Applicable		
			9. DATE(S) IMPOSED None		

II. CHARGES AND SPECIFICATIONS

10. Charge I: Violation of the UCMJ, Article 92

Specification 1: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, who should have known of his duties, at An-Nasiriyah, Iraq, from about 1 April 2003 to about 30 June 2003, was derelict in the performance of those duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of unknown Iraqi prisoners of the Camp Whitehorse detention facility, as it was his duty to do.

Specification 2: In that Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, who should have known of his duties at An-Nasiriyah, Iraq, from about 4 June 2003, was derelict in the performance of those duties in that he willfully failed to properly safeguard the physical health, welfare, and treatment of (b)(6), as it was his duty to do.

(CONTINUED ON SUPPLEMENTAL PAGE)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) PROKUSKI, CHASE M.	b. GRADE LCpl	c. ORGANIZATION OF ACCUSER HqSvcBn, 1FSSG, MarForPac, CamPen, CA
d. SIGNATURE OF ACCUSER 		e. DATE 16 OCT 03

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 16th day of OCT, 20 03, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

J. M. MCCALL
Typed Name of Officer

Captain, USMC
Grade and Service

Signature

HqSvcBn, 1st FSSG, MarForPac, CamPen, CA
Organization of Officer

Judge Advocate

Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

ORIGINAL

Charge II: Violation of the UCMJ, Article 128

Specification 1: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, did, at An-Nasiriyah, Iraq, between on or about 1 April 2003 through 30 June 2003, unlawfully strike unknown Iraqi prisoners of the Camp White Horse detention facility on their bodies with his hands, knees, and feet. *jjf 040413*

Specification 2: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, did, at An-Nasiriyah, Iraq, on or about 4 June 2003, unlawfully strike (b)(6) by punching him in the body with his hands. *jjf 040413*

Specification 3: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, did, at An-Nasiriyah, Iraq, on or about 3 June 2003, unlawfully strike (b)(6) grabbing his feet with his hands. *jjf 040413*

Specification 4: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, did, at An-Nasiriyah, Iraq, on or about 4 June 2003, unlawfully strike (b)(6) on his body with his hands and feet.

Specification 5: In that Sergeant Gary P. Pitman, U.S. Marine Corps Reserve, on active duty, did, at An-Nasiriyah, Iraq, on or about 4 June 2003, unlawfully strike (b)(6) on his body with his hands and feet. *Spec 4, 5 w/ out prejudice*
jjf

ORIGINAL

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) Pittman, Gary P.		2. SSN (b)(6)	3. RANK/RATE Sgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION HqBn, 1 st MarDiv, Camp Pendleton, CA 92055-5380			6. CURRENT SERVICE a. INITIAL DATE 26 May 03 b. TERM 4 yrs	
7. PAY PER MONTH a. BASIC 2367.90 \$2283.30		b. SEA/FOREIGN DUTY None.	c. TOTAL 2367.90 \$2283.30	
8. NATURE OF RESTRAINT OF ACCUSED Not Applicable			9. DATE(S) IMPOSED None	

ADDITIONAL

II. CHARGES AND SPECIFICATIONS

10. Charge: Violation of the UCMJ, Article 128

Specification: In that Sergeant Gary P. Pittman, U.S. Marine Corps Reserve, on active duty, did, at or near Camp Whitehorse, detention facility, An-Nasiriyah, Iraq, on or about 4 June 2003, unlawfully strike (b)(6) by kicking him in the body with his feet.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) SMITH, ZANETA E.	b. GRADE PFC	c. ORGANIZATION OF ACCUSER HqSvcBn, 1FSSG, MarForPac, CamPen, CA
d. SIGNATURE OF ACCUSER Zaneta E. Smith		e. DATE 6 April 04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 6th day of April, 20 04, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

L. J. FRANCIS

Typed Name of Officer

HqSvcBn, 1st FSSG, MarForPac, CamPen, CA

Organization of Officer

Major, USMC

Grade and Service

Judge Advocate

Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

Signature

The defense had no further motions to present.

The accused pled as follows:

Not Guilty to all Specifications and alligations under the charges.

After ascertaining that the accused had consulted with his defense counsel and understood his right to request trial by military judge alone and his right to be tried by members, including enlisted members if he so desired, the military judge accepted the accused's request for trial by officer members.

The following members entered the courtroom:

Colonel James J. Coghlan, United States Marine Corps Reserve;
Colonel Oliver M. Grant, United States Marine Corps Reserve;
Colonel Carl Shelton Jr., United States Marine Corps
Lieutenant Colonel John S. Duda, United States Marine Corps;
Lieutenant Colonel Robert Davis, United States Marine Corps;
Lieutenant Colonel Arthur Britton Jr., United States Marine Corps Reserve;
Lieutenant Colonel Robert Sprague, United States Marine Corps Reserve;
Major George M. Ellis, United States Marine Corps;
Captain Alexander Gilbert, United States Marine Corps;
Captain Lawrence Goshen, United States Marine Corps;
Captain Douglas R. Cullins, United States Marine Corps;
Captain Christopher J. Thomas, United States Marine Corps;
First Lieutenant Richard S. Maidens, United States Marine Corps Reserve.

The members were sworn.

The members examined the charges submitted to them for findings.

The military judge presented preliminary instructions to the members as to their duties and the conduct of the proceedings.

The military judge, trial counsel, and defense counsel conducted voir dire of the members collectively and individually.

The trial counsel challenged for cause Colonel Grant and First Lieutenant Maidens. The military judge denied the challenge for Colonel Grant. The military judge granted the challenge for First Lieutenant Maidens.

The trial counsel imposed his peremptory challenge upon

Colonel Grant.

The defense counsel challenged for cause Major Ellis. The military judge granted the challenge for Major Ellis.

The defense counsel imposed his peremptory challenge upon Captain Goshen.

The members challenged for cause and peremptory challenges were excused from the courtroom.

The military judge informed the members of the nature of the charges against the accused, of the accused's pleas, and of the members' responsibilities and duties.

The trial counsel presented an opening statement.

The defense counsel presented an opening statement.

Dr. G. D. Solis, civilian, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Gary D. Solis. I live in (b)(6). I have been a law instructor at the U.S. Military Academy at Westpoint for six years. I teach constitutional and military law. My specialty is the law of war. I am the director of the military academy's law of armed conflict program. I served 26 years in the Marine Corps. I retired as a lieutenant colonel. Before I became a judge advocate, I had two tours in Vietnam. I was a trial counsel for several years. I was also the chief prosecutor for 1st Marine Division here at Camp Pendleton, and chief prosecutor for 3d Marine Division in Okinawa. I was the deputy staff judge advocate for 1st Marine Division. I was the general court-martial judge for the Pacific out of Okinawa and the GCM judge here at Camp Pendleton.

I taught the law of war last year at Catholic University School of Law. Before that, I taught at the School of Economics in London, England where I taught criminal law and British law. I have published two books, the Marine Corps' official history of military law in Vietnam entitled *Marines and Military Law in Vietnam*. The second book entitled *Son Thang - An American War Crime*. I also have a variety of articles in professional and legal journals.

The law of war essentially is the 1949 Geneva Conventions, which are the core of modern law of war. In addition, there are the 1907 Hague Regulations. There are also the 1977 additional protocols, plus some additional treaties.

In 1949, in reaction to the abuses in World War II, the international community banded together and produced the four 1949 Geneva Conventions. The first relates to the wounded and sick. The second relates to the wounded and sick at sea. The third relates to prisoners of war. The fourth relates to civilians. They were leaps ahead of anything that had been devised by man. They have become the most widely ratified treaty in the history of the world community. They are referred to as customary international law.

Customary international law are those matters that have become law through practice. Eventually, the practice becomes something that is required. It is not necessarily written in a treaty, so it is customary in the international community.

Geneva Convention III deals with treatment of enemy prisoners of war.

The defense objected to the prosecution publishing a copy of Geneva Convention III to the members. The military judge overruled the objection.

Questions by the prosecution continued:

There are two categories of prisoners of war. The first are the individuals who are the army of one of the parties to the conflict. The other category are individuals who are engaged in the conflict who are not members of the armed force of the party, like the members of organized resistance groups.

The United States is a signatory to the Geneva Convention III. The country of Iraq has long been a ratifying country and high contracting party to the Geneva Conventions.

I am familiar with military terms of war. An ambush is when the enemy sets a position to trap an approaching enemy. An ambush is a legitimate military tactic.

Inhabitants who spontaneously take up arms to resist the invading force is what the law refers to as a levee en masse. Upon capture, they are entitled to prisoner of war status.

Sometimes it is not clear what the status is of someone who has

fallen into our hands. Article V provides for the process to determine the status of individuals who have been captured when there is a doubt as to the status of the individual. Article V mandates a hearing to determine the status of individuals who have been captured when their status is in doubt.

If an individual is captured, an interview by a Human Exploitation Team cannot suffice for an Article V tribunal. Article V has very specific requirements. It requires three individuals, one of whom must be a field grade officer, one must be a judge advocate, and one must be an officer to act as recorder. There are a number of very specific questions that must be asked in order to determine the status of the individual in question.

If someone has not been given an Article V tribunal, their status is a detainee, which is a temporary status an individual is in until his or her status can be determined. The definition of a protected person would be found in Article IV. Anytime someone from the opposing side is in the hands of the other side, they are a protected person. A protected person has the right to be treated humanely. The duty of care to a detainee is to provide medical treatment and care where needed, to not subject the individual to torture, beating, harsh treatment, threats of harsh treatment, to provide the basic necessities of life for the individual.

Humane treatment is never specifically spelled out in the Geneva Convention. Article XXVII and XXXII of Geneva Convention IV are, in essence, the required treatment. Article LXXVI states they shall receive medical attention as required by their state of health, which means if there is a detainee who is in need of medical attention, he shall receive it. Individual Marines have obligations under the Geneva Conventions. They are to be informed of the general contents of the conventions.

The Geneva Conventions will apply in an armed conflict between two high contracting parties. Whenever you have a conflict between two nations who have ratified the Geneva Conventions, the Geneva Conventions apply.

There are a number of DoD orders and regulations that refer to these conventions. Prosecution Exhibit 4 is the DoD directive which orders the law of war program. This order has been promulgated. This directive is requiring the service branches to report any instance of law of war violations that may become aware and to issue regulations to provide for such reporting and to disseminate law of war instruction to the individuals in their component services. There are programs in place in each of the

branches of service to disseminate the information on the Geneva Convention.

What an individual may have done prior to his capture or detention is irrelevant. There is a specific article in GC IV with regard to civilians that specifies that regardless of what the individual may have done contrary to the interest of the holding nation, his status and his treatment shall remain unaffected, even if he is a criminal.

CROSS-EXAMINATION

Questions by the defense:

I didn't review any testimony or facts regarding the case of United States versus Pittman prior to my testimony. I didn't go to Iraq in Operation Iraqi Freedom I or II. I never visited Camp Whitehorse or read anything about it in relation to my testimony here today. I have never testified before as an expert.

I am roughly familiar with what the physical conditions were at the Camp Whitehorse facility in June of 2003. I did not review any SOP's of 2d Battalion, 25th Marines. I am not aware of any training that Sergeant Pittman might have attended that is required by the DoD 5100.77. I would agree Marines can use necessary force in order to compose and maintain discipline within their units and with detainees. Necessary force is what is needed for the EPW or detainee to comply with whatever needs to be done that is lawful to maintain good order and discipline within the detainees and within the command of the camp.

In order for Marines to protect themselves, their unit, and their fellow detainees, they can strip search somebody that's going to be in their position to see if they have any contraband or weapons.

The Geneva Convention sets forth a requirement to pay EPWs or detainees in Swiss francs. I am not aware of any Iraqi EPW or detainee that has been paid in Swiss francs or American dollars. The EPWs or detainees are also required to have a canteen. The detainees were not given canteens. However, they were provided health and comfort packs, in the form of MREs. There's also a provision as well to provide medical care. There is also a requirement for an infirmary on the premises. It would not be the responsibility of a sergeant of the guard to ensure that there was an infirmary at a detention facility.

For someone to have medical care, that means they would need

access to a medical doctor. The EPW or detainee should have medical care at or near the level of what we provide our own people. Marines traditionally rely on medics in the field. A corpsman coming to visit a detainee, just as they would to visit a Marine, is not a violation of the Geneva Convention. I doubt a sergeant would be responsible for the physical layout of the medical facility. A sergeant would not be reasonable for the SOP for inprocessing the detainees.

The Geneva Convention is more or less an agreement between the high contracting parties. There is a requirement that the provisions of the Geneva Conventions be disseminated to the personnel who have to apply them. If you are a member of the armed forces of one of the parties in the conflict, upon capture, you are a prisoner of war.

If you have somebody who is suspected of conducting acts contrary to the interest of the holding state or party, that individual can't claim the status of prisoner of war. A prisoner of war is the highest status one can have upon capture. They are, nevertheless, treated with humanity. If you are unsure of someone's status, you are supposed to hold a tribunal. I am not aware of any tribunals at Camp Whitehorse in June of 2003. I don't know what they did in regards to Article V at Camp Whitehorse. I know that there were some Article V hearings somewhere in Iraq, but I can't say where. The Article V hearings are made known by Marine Corps order and by orders from lower commands.

I recall an interview that I gave where I indicated that hostilities have ended and those detainees involved were not subject to the Geneva Convention. I remember responding during that interview that the Geneva Conventions did not apply during a period of occupation, which was an error. I do occasionally make mistakes in the process of my profession. That was one of my more public mistakes.

EXAMINATION BY THE COURT

Questions by the military judge:

At all times, a prisoner of war, detainee, or whatever their status, they are entitled to humane treatment. That humane treatment would be a prohibition against such things as beatings, threats of beatings, torture, failure to provide medical care, or threats thereof.

REDIRECT EXAMINATION

Questions by the prosecution:

Civilian detainees must receive medical care according to their needs. According to their needs, there is nothing in customary international law that we can refer to that could help us understand what that means. One has to interpret the Geneva Conventions in a reasonable way, as in so many aspects of the law. A reasonable interpretation of that would lead to the obvious result that whatever medical attention is required is that which should be provided.

RECROSS-EXAMINATION

Questions by the defense:

I do not know what medical care was available in An Nasiriyah for Marines or the Iraqi detainees.

Maj (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am currently a major in the IRR. I am not currently attached to a unit. I reside in Lorton, Virginia. I initially enlisted in the reserves in 1987 and then spent five years in the reserves on active duty. I came back into the reserves in January 1998. I did deploy in support of Operation Iraqi Freedom in March 2003 with 2/25. I was eventually assigned to camp Whitehorse in An Nasiriyah around 4 April. I was a weapons officer within the battalion. I acquired another additional duty of the Whitehorse holding facility, which was a temporary detention center. It was maybe three rooms roughly this size. I became the OIC of the facility about a week after arriving. The facility was already in existence by the time I became the OIC. My SNCOIC was Staff Sergeant (b)(6) He had a hernia. So he was medevac'd back to the states. Staff Sergeant (b)(6) took his place as the SNCOIC.

I was the OIC of the facility up until about May 28, 2003. I was relieved of that duty because of coalition forces coming in. I had a lot of coordination and liaison to be done with the Italians and Brits that were coming in. I was told that I may need to leave Whitehorse. I was replaced by Major Paulus. I believe he

was the XO for H&S Company.

When I first came down to the detention facility, there wasn't much of a process. We made some basic standing orders. The guard Marines from 2/25 would take possession of whomever the individual was, whether detainee or EPW, from the dropoff unit. Information is then taken from the capturing unit about the EPW and logged into the logbook. Then EPW is then taken off the truck and put in the external pen.

Prosecution Exhibit 44 for identification is a sketch of the Camp Whitehorse detention facility. I have marked on the diagram to indicate where the openings were in the inprocessing section. After receiving the EPWs from the capturing unit, a strip search is conducted.

I know Sergeant Pittman. He was a guard at the EPW facility. He was one of the primary searchers. His background as a (b)(6) is why he was selected for this position. PFC (b)(6) was also a Marine who had that background.

Generally, during the strip search, one Marine would be doing the search, the other Marine would be next to him with an M16 providing cover. The prisoner would be up against the wall facing the wall. The prisoner would be patted down. Once it was determined the prisoner had nothing on his person, the cuffs are taken off and the sandbag was taken off. Generally when an EPW is brought from the capturing unit, they would typically have a sandbag on their head and their hands flex cuffed. Once the sandbag and flex cuffs are taken off, the EPW is stripped and checked. The orifices, the body, and the hair are checked. I never had an interpreter.

After the strip search, the clothes are put back on. The team would take him into the holding cell. They are then segregated and sat there on the ground.

Prisoners that are brought in by the HET, the Human Exploitation Team, there is no mystery as to why they are there. For a while, the HET's focus was on the Army 507th unit, which was the unit that had Jessica Lynch with them. The Marines at Camp Whitehorse were required to do sleep deprivation techniques on the prisoners as directed by HET. Some individuals were required to do this sleep deprivation, most of them weren't.

After this sleep deprivation period, the next step was to be interviewed by the HET. They would come and do this whatever time they came on board.

There were rules with regard to use of force when dealing with the EPW's when I was the OIC. There's deadly force, which was used when life is threatened or things of that nature. The other force was no unreasonable force authorized, just necessary force to get somebody to move. We used a common-sense approach. The guards were not allowed to punch EPWs because they wanted to. They were not allowed to kick EPWs just because they are angry with them.

CROSS-EXAMINATION

Questions by the defense:

I was the first officer in charge of Camp Whitehorse detention facility. At the time I assumed my duties, 2/25 had already taken custody of that facility. The first person from my battalion running that detention facility was a staff sergeant. When I was assigned the OIC billet at the Camp Whitehorse detention facility, I was working as the battalion weapons officer.

There was no turnover conducted between the 15th MEU and me personally as the OIC. Major Powers didn't provide me with any guidance prior to me assuming my duties as the OIC. When I assumed my billet as the OIC at Camp Whitehorse, I didn't receive any guidance from the battalion S-3. I asked for some, but they didn't have any. 2/25 requested some guidance from the MEU, and they receive nothing. I wasn't given any training by any steps in the chain of command prior to assuming my duties as the OIC. I didn't conduct any training for the guards that worked for me at Camp Whitehorse in terms of handling EPW's.

The only items that guards had in their possession to operate in the execution of their duties were there TO weapons. There were no additional items like batons or anything of that nature. We had requested support but received nothing, to include MP support. I made several requests at staff meetings for support, to include translators, a number of times. It was dismissed. The only resources I could count on were maybe EPW tags and some flex cuffs, but not many. It was very difficult to get anything.

I was the OIC of the Camp Whitehorse detention facility from April of 2003 the end of May 2003. The majority of the guards working for me were pulled from H&S Company. Sergeant Pittman was one of the Marine working for me. He was one of the few who had an infantry background. When I arrived at the facility, I noticed the capturing unit sometimes used unnecessary force on the detainees. I implemented changes to stop that from taking place. I had a berm built around the facility. I also placed concertina wire around the external pens to add order and control to that

whole process.

I observed Sergeant Pittman conduct searches on numerous occasion during my time as the OIC. He used the necessary amount of force in conducting those searches.

I had a logbook created to log information about each EPW. My logbook was more detailed than the EPW tags that capturing units would deliver EPWs with. Some units didn't even fill out the tags. So we would get with the capturing unit and get as much information we could and log it into our logbook.

I am aware of the fact that during my time as the OIC of Camp Whitehorse that there were multiple individuals detained in my facility who were involved with the ambush on the 507th Maintenance Battalion.

During the inprocessing, that was the highest risk of the whole process. My Marines conducting the search were all authorized to use deadly force. There was no formal training given to the Marines in terms of proper conduct of searching detainees. During my time as OIC of Camp Whitehorse, there was no translator assigned to my facility, which created difficulties for the Marines searching detainees brought to my facility. I have personally observed these difficulties taking place.

This problem with translation and inability to communicate verbally led to being pretty common for my guards to have their hands all over these detainees to make them do what they needed to do. In my opinion, all force used was necessary. There were a couple of detainees who tried to bring weapons into the facility.

The EPWs didn't always come to us in good physical condition. Some of the people that came in required some type of medical care. We had corpsman assigned to Camp Whitehorse. I implemented a procedure to have a corpsman on hand to visually inspect detainees when they arrived.

The guards would use a command voice and yelled at times. This was done to assert the authority of my guard force over those detainees. The Marine guards did not wear a rank insignia so the detainees don't know who the senior man is. If I came down to the facility, I would turn my collar in. We also put tape over our name tapes so they wouldn't know what our names were. All this was done at HET's direction to some degree. It was not uncommon for us to rely on HET's guidance in terms of how to run that facility.

The criminals that were detained at my facility included people that were suspect of, or had committed, murder, rape, sexual assaults, and assault with deadly weapons. We also had detainees who had mental conditions. One of the detainees was actually psychotic.

My turnover of Camp Whitehorse to Major Paulus took place on or about 28 or 29 May 2003. He was the XO of the compound. So he knew some basic things that went on there.

REDIRECT EXAMINATION

Questions by the prosecution:

There was an EPW handling class at Lejeune that the Marines went through. It was a basic class. Humane treatment of EPWs was discussed. This class was given to most of the Marines for 2/25.

Once a day, the corpsman would come down and check on everybody there. It was guaranteed that once a day, a corpsman would be down to do a check of the detainees. In addition to that, if anyone came in who was broke or hurt, we would call a corpsman and document it in the logbook.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I did not observe the training the Marines received back at Camp Lejeune dealing with EPW training. I am not sure if there was a separate class or period of instruction given on rules of engagement. ROE cards were provided to the Marines of 2/25. I don't know if every Marine got one. I doubt training was given on the Geneva Convention.

I didn't have an office at the Camp Whitehorse. I spent my time between Whitehorse detention facility and the COC. I was at the detention facility for the majority of the delivery of any EPWs. Other than that, I did a check of the facility at least once a day. If I was unavailable to observe the delivery of an EPW, Major Froeder or Major Paulus would cover for me.

In my visits to the detention facility, I never saw Sergeant Pittman or any of the other Marines from 2/25 hit, punch, strike, kick, or in any way mistreat a detainee.

Camp Whitehorse was my primary place of residence while I was in Iraq. My presence at the detention facility was on an as-needed

basis. The security of Camp Whitehorse consisted of watch towers and berms.

I wasn't present when the 2/25 guards took custody of the detention facility. I didn't witness the turnover. There was not a corpsman actually at the defense facility, but there were two corpsman at Camp Whitehorse. The two corpsman that were there were primarily for the Marines. If needed, they would also look after the detainees.

The inprocessing would take maybe an hour or so. If it was only one person dropped off, it would take about 10 to 15 minutes. The average length of the stay for a detainee at Camp Whitehorse was less than a day or two at most. The criminals stayed there. The maximum capacity for the detention facility was about 25 to 30. We far exceeded that. I think we may have had 34 at the most at one time.

We had 18 Marines total to man the facility. I believe we were strapped for personnel because those 18 Marines were also used as security for the camp.

There were no published orders or letters of instruction concerning the procedures to be followed by the guards of the detention facility. I never wrote an SOP. I never observed any Marine using excessive force against the detainees.

There were maybe three Marines on post inside the detention facility at one time. More were there during the inprocessing stage.

Due to the language barrier, it was required that the Marines working in the facility would put their hands on them. I have seen a detainee grab one of the searchers, Sergeant Pittman. The detainee pulled Sergeant Pittman off his feet. PFC (b)(6) came in and actually delivered a blow with his fist. I came running in from outside. The detainee let go at that point. The recourse would have been the cover man pulling the trigger. So a couple shots to the side was better than a 5.56 round. On another occasion, a detainee grabbed Sergeant Pittman's knife. Sergeant Pittman just twisted his arm and brought him to the ground.

Staff Sergeant (b)(6), USMC, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6). I am a staff sergeant in the United States Marine Corps Reserve. My current unit is 2d Battalion, 25th Marines. I deployed in support of Operation Iraqi Freedom with 2/25. At some point, I ended up at Camp Whitehorse detention facility outside An Nasiriyah, Iraq. I was the SNCOIC of that facility beginning April 1 through June 30, 2003. I was required to maintain a log to document all pertinent data related to all the prisoners and personal information regarding the place of capture, circumstance of capture, weapons that were found on them, injuries, as well as day-to-day operations of the running of the prison.

The last time I saw the logbook was yesterday. It is the same book that I was using at Camp Whitehorse. Prosecution Exhibit 39 is the initial log information for each prisoner. The very last line in this log is referring to Prisoner (b)(6). We received that prisoner on June 3, 2003. There isn't anything different about these copies than what's in the actually log itself.

Prosecution Exhibit 39 for identification was offered and admitted as Prosecution Exhibit 39 absent objection from the defense.

Questions by the prosecution continued:

The first block on Prosecution Exhibit 39 tells you the date and time the prisoner is received. The second block is his name. I made the entry where it says "old man." I noticed this subject to be of an elderly age as compared to the other prisoners we normally received. I later on found out he was 52 from NCIS agents. The "date and time released" block refers to the date and time a prisoner was released either to general population or back to place of capture or released to higher authority for further interrogation. For (b)(6) I just logged in the time of death for the individual. 0115, 6 June '03 is the time of death pronounced by the medical personnel.

The capturing unit of (b)(6) was Weapons Company, 2/25. The circumstance of capture were the consecutive marks saying Mr. (b)(6) circumstances were the same as two lines above. There were three individuals captured at the same time. It says "house

raid, 507 accident, M-16A2, serial number 7135296." This was the information given to us by the capturing unit.

The capturing unit found an M-16 service rifle in the possession of these individuals. The rifle was clearly labeled with a 507 Army unit that was ambushed at the beginning of the war. The next column says "Condition of EPW/Detainee," which is a visual inspection of the prisoner. (b)(6) was in fair condition.

Prosecution Exhibit 38 for identification was the other part of the logbook information as it pertained to daily operations and significant events that we logged in at each shift on a given daily basis. The NCOIC on duty would make the entries in this log.

Prosecution Exhibit 38 for identification was offered and admitted as Prosecution Exhibit 38 absent objection from the defense.

Questions by the prosecution continued:

There are log entries in Prosecution Exhibit 38 that refer to (b)(6) Prison number 0310337 refers to (b)(6). We had a total of 19 prisoners at the time. June 5 2003 at 1705 was the next time (b)(6) was mentioned specifically in the log book. There was another entry made at 2340. The next one occurred June 6 at 0047. Actually, the entire day relates to that to (b)(6).

The court-martial recessed at 1642, 24 2004.

The court-martial was called to order at 0757, 25 Aug 2004.

CROSS-EXAMINATION

Questions by the defense:

I was assigned to 2/25 at Camp Whitehorse. I arrived at camp Whitehorse on or about April 1, 2003. My civilian occupation is a project manager for Empire Blue Cross Blue Shield. I'm an active reservist right now. My MOS is 0639, infantry unit leader. I was activated for Operation Enduring Freedom January 2002. We were trained at Camp Lejeune, North Carolina. We were in Kuwait for a about a week and a half. Then we went up North to An Nasiriyah and reported to Camp Whitehorse.

In my civilian occupation, I didn't deal with detainees or EPWs of any kind. While I was in Lejeune, I didn't receive any training regarding EPWs or handling of prisoners of war. I did receive a

class on the laws of war, which lasted about 30 minutes.

I arrived at Camp Whitehorse between April 5 and April 7. I was immediately assigned to reinforce the detention facility at Camp Whitehorse. I was sharing the duties with Staff Sergeant (b)(6). I was given a 15- to 20-minute brief with regards to what my role would be and how the facility was run. Staff Sergeant (b)(6) later left Camp Whitehorse. I became the SNCOIC shortly after Staff Sergeant (b)(6) left for his surgery, which was about two to three weeks after I arrived. Other than my 15- to 20-minute brief, I didn't receive any additional training on handling EPW's.

As time went on, myself and the NCOs improved the facility substantially. We reinforced security around the perimeter, building berms, trying to improve the actual facility where the prisoners were, and increasing or guard force.

I was the SNCOIC of 18 guards. I set up a guard schedule to try to divide the time evenly so that everyone would have even shifts 24/7. We were also tasked on our off time to provide security for the actual camp. The safety of my Marines was paramount in my concerns as a SNCO.

When prisoners arrived, we would immediately approach the capturing unit's NCOIC and gather as many details as we could for the prisoners being brought in. Then we would immediately place the prisoners into receiving pens where they would be cuffed and bagged. After that, one by one, they were placed on a wall to strip search them and put them into the indoor holding cells in isolation until they were interviewed by the HET. After that, they were placed in general population. This receiving phase was dangerous because you wouldn't know what they could be hiding. The strip search was not an easy process because of the language barrier and cultural differences. The Iraqis weren't real thrilled about taking their clothes in front of strangers.

During the inprocessing, there was a lot of yelling to get control and get these people to comply. There was a lot of yelling and a lot of physical movement to try to make them understand what it was that we wanted them to do. We didn't have an interpreter during April or May. We did have one in June. We acquired Sergeant (b)(6) a few weeks prior to closing down the camp, which was mid June. There was a written SOP in place. There were no guidelines listed at the inprocessing center of what to do with the POWs.

My Marines were authorized to apply the use of force only as necessary and to make the prisoners comply or as a self-defense

mechanism. They can even use deadly force, if necessary, to defend the jail and the camp. None of my Marines could speak Arabic. For the most part, all signal or commands given to these detainees or EPWs were in English. I was present 95 percent of the time during the off-loading and inprocessing of EPW's. I often times filled out the log book. I never witnessed my Marines use excessive force. Sergeant Pittman was one of the Marines ordered to strip search EPWs.

(b)(6) showed up June 3, 2003. I recall his physical appearance, as far as being older than most prisoners that we had. He was slow in his movements and not too responsive to our commands. I recall him being strip searched. He was more resistant as far as not being too responsive. If we would give him a command, he would just stand there and look at us. Lance Corporal (b)(6) and Sergeant (b)(6) were the Marines who strip searched (b)(6). There was a doc there also.

Sergeant Pittman wasn't involved in the strip search of (b)(6). At the time (b)(6) was strip searched, Sergeant Pittman was escorting one or the other EPWs to another part of the facility. The docs would usually come by once a day to check on EPWs and detainees.

On 3 June when (b)(6) was inprocessed, I was there when he was off-loaded from the capturing unit. (b)(6) delivery was a little bit rough. Again, he was not very compliant. Speed was essential in processing these EPWs to get them from the off-loading unit into the processing center for safety reasons. The next time I recall seeing (b)(6) was probably the morning of June 4.

The temperature during the day would range between 115 and 125; at night, probably between 90 and 105. My Marines were billeted in the same area as the EPWs and living in the same conditions. We had no running water at that facility. There were no wash facilities. There was no infirmary inside that facility.

When I saw (b)(6) the next morning, he was being taken out to eat chow in one of the outdoor pens. I didn't see anything unusual happen with him at that time. We were waiting for the interrogation team to come and talk to him. I don't recall seeing (b)(6) again that day after he talked to an investigation team.

Next time I did see (b)(6) was on 5 June at about 1700. I heard moaning and noise from one of the indoor holding facilities. At that time, I proceeded to enter the place and found out that (b)(6) had defecated all over himself and was throwing himself

over the concertina wire. Sergeant Pittman wasn't on duty at this time. The only Marine I can recall being on duty was Lance Corporal (b)(6). I do recall Major Paulus and Major (b)(6) being there.

When I entered the room, I noticed (b)(6) was on the floor. He was being moved by the neck by Lance Corporal (b)(6) to one of the outdoor holding pens. I saw (b)(6) dragged for approximately 10 feet. I didn't order (b)(6) moved. I heard someone say "Get him out of here." Sergeant Pittman was not there.

(b)(6) was placed in the outdoor recreation pen. At that point in time, he was naked. His clothes were taken because he had defecated all over them. They were burned for sanitary conditions. There were not a lot of extra clothes at camp Whitehorse. Some of the EPWs pretty much showed up in rags and had to remain in those. Sometimes, we would dig an old t-shirt out of our own supply and give it to them. We didn't have the resources to do it all of the time.

I didn't see too much of (b)(6) during the dragging incident because I was in the middle of handling the processing of a high profile prisoner (b)(6). With regard to (b)(6) he was supposed to be totally isolated from the rest of the prisoners. He was to receive special accommodations. He was to have his own facility, his own cot, and a little radio.

Myself, Major (b)(6), Major Paulus, and some other Marines were there during the dragging incident of (b)(6). (b)(6) was dragged out by Lance Corporal (b)(6) by his neck. The surface under (b)(6) was dirt and pebbles and covered in feces. Mr. (b)(6) was being moved out of the pen so we could clean up the area.

We got word from battalion that the sheik was no longer to receive isolation or a special cell and to be put into general population. At this point, (b)(6) went through a normal inprocessing like everybody else. I didn't witness the strip search.

We received word from the battalion that there was a massive crowd approaching our position. Their intent was to protest the capture of (b)(6) and possibly try to free him by force. PFC (b)(6) strip searched (b)(6). Our unit went into full alert. We gathered all available Marines and placed them in a full defensive position. Sergeant Pittman was very active in organizing our defense.

The unit was told to stand down after about two hours of alert. We stayed on medium alert throughout the night. This situation that occurred with the alert and the (b)(6) was right before the dragging of (b)(6)

On June 6, close to 0100, I was awoken by an NCO in charge of that shift. He informed me that (b)(6) was not responsive and had no vital signs. I got out the rack and proceeded to check on (b)(6) condition. When I approached (b)(6), I noticed that he wasn't responsive. I ordered Lance Corporal (b)(6) to go get (b)(6). I contacted Major Paulus and let him know what was going on. (b)(6) declared him deceased. We then proceeded to clean the body and put him in a body bag. Later that morning, we had a HMMWV take him to the An Nasiriyah morgue.

When (b)(6) was taken out of his cell, (b)(6) was summoned to examine him. He diagnosed (b)(6) as not urgent was the impression I got. We all got diarrhea one time or another. So it wasn't something out of the ordinary.

I did not see Sergeant Pittman hit or strike (b)(6). Sergeant Pittman was not on duty in regards to the (b)(6) dragging incident.

(b)(6) was captured by Weapons Company, 2/25. I believe it was a house raid. They found an M-16 service rifle belonging to the 507th Maintenance Company unit, which was ambushed in March 2003. In addition to (b)(6), we received other detainees involved in the 507th incident as well. I don't recall the exact count, but throughout the time that we were maintaining the jail, I would say five to ten other prisoners were involved with the 507th incident. When I logged them in, I would essentially put down in the log that they took part in the 507th incident.

Defense Exhibit A for identification was offered and admitted as Defense Exhibit A absent objection from the prosecution.

Defense Exhibit B for identification was offered but not admitted by the military judge. The military judge imposed his own objection to the document.

Questions by the defense continued:

Defense Exhibit A is a copy of the logbook that I maintained while I was Camp Whitehorse. This portion of the logbook pertains to initial information gathered when receiving prisoners. The circumstance of capture for (b)(6) was that he took part in 507th incident. (b)(6) was not the only 507th detainee that we had at Camp Whitehorse.

On May 10, 2003 (b)(6) were captured as suspects of torture of the 507th. On June 4th, 5th, and 6th, more detainees came into Camp Whitehorse. I made these entries. I witnessed the strip search for these entries. I don't recall there being any sort of illegal or unnecessary force used in regards to any of those entries for June 4th, 5th, or 6th. More than likely, Sergeant Pittman was involved in the inprocessing. For all the times that I was there taking information, I never saw Sergeant Pittman use unnecessary force to get a prisoner or detainee to comply to orders.

Sergeant (b)(6) reported to the unit about two weeks prior to closing down the camp. Sergeant (b)(6) was an interpreter.

I never saw PFC (b)(6) grab Mr. (b)(6) around the neck area. I first learned that Mr. (b)(6) had been grab around the neck by PFC (b)(6) when we went back to Kuwait during the investigation process.

REDIRECT EXAMINATION

Questions by the prosecution:

I had a law of war instruction at Camp Lejeune before 2/25 deployed for Operation Iraqi Freedom. Major Paulus gave the class. We were instructed on the Geneva Convention. We were instructed to treat EPW's like you would want to be treated if you were an EPW and that Marines were supposed to treat EPW's humanely.

I never saw Sergeant Pittman strike an EPW with unnecessary force. On occasion, the HET team would ask us to sleep deprive some of the EPWs. The typical process for the sleep deprivation was that once the strip search occurred, the EPWs were placed back in flex cuffs. A sandbag is put on their heads. They were taken to a cell where they were required to remain awake all night long. The purpose of this was to wear them down so that the next morning when HET arrived, they would be more compliant. In order to make the detainees stand up, actually physical force was used from time to time, which involved blows to the meaty portions of the thighs and soft areas of the arm. These blows were delivered with fists and light kicks.

A palm strike is a technique where you curl your fingers back so you are striking with the palm so you won't break your fingers. This is a technique that Sergeant Pittman and Lance Corporal (b)(6) taught the Marines. I saw Sergeant Pittman strike EPWs in order to get them to stand up. He punched them in the meaty portion of their body.

Sergeant Pittman was NCOIC of his guard shift. His shift consisted of Lance Corporal (b)(6) and Lance Corporal (b)(6). At the time (b)(6) was at the camp, there were 18 guards that worked at the camp.

When I first saw (b)(6) he looked like a 70-year-old man. I later learned he was 52 years old. I thought (b)(6) looked slow in his movement when I saw him. I did not instruct any of the guards not to strike (b)(6) because he was a 70-year-old man. He went through the procedures like everybody else. If (b)(6) didn't comply, I thought he would be punched in the meaty portion of the body, if it was necessary. Punching a 70-year-old man is humane, depending on the situation.

On 5 June 2003, I was dealing with a sheik. I heard commotion coming from one of the cells. I went to the cells to see what was going on. When I went to the cell, I saw Lance Corporal (b)(6) grabbing (b)(6) around the head and neck. I saw him dragging (b)(6) out of that cell. (b)(6) was covered with defecation from his neck all of the way down to his feet. It was the worst smell I had ever smelled in my life. Nobody was helping (b)(6) dragging him out of there by the head and neck. I was standing there watching. I thought (b)(6) was sick.

Marines had suffered similar symptoms in the past with diarrhea. No Marines that were suffering from diarrhea were dragged by the head and neck. We were taught at Camp Lejeune to treat the EPWs like we would want to be treated if we were a prisoner of war. I have heard of the code of conduct. If I was a prisoner of war and was sick, I wouldn't want to be dragged around by the head and neck.

Around 1700 was when I saw the dragging. I came in as it was happening. There were two officers standing in that room, who apparently gave the order. I am a SNCO of Marines. I have an obligation to uphold the law when I see it being broken. I didn't think he was being treated humanely, but I didn't know the nature of what was going on at the moment. I asked the officers what was going on. That's when they explained to me what had just happened. I did nothing to stop it except ask questions.

Major (b)(6) was aware of a discussion amongst the guards concerning the handling of the prisoners. Marines weren't supposed to get out of hand with prisoners, meaning don't use unnecessary force.

After (b)(6) died, an investigation began into his death by NCIS. About two weeks later, I was given testimonial immunity by

the government.

Prosecution Exhibit 29 for identification is the entrance to the building where the troops live.

Prosecution Exhibit 29 for identification was offered and admitted as Prosecution Exhibit 29. There was an objection from the defense, which was overruled by the military judge.

Questions by the prosecution continued:

In the photo of Prosecution Exhibit 29, right there on the wall on the entrance to the door, it says "2/25 Terror Dome." It was there when I arrived at the camp. I didn't know that PFC (b)(6) sprayed that on the wall. It didn't mean anything to me. Marines write things all the time anywhere without any significance to what we are were doing there.

In Defense Exhibit A, where it refers to the April 23, 2003 entry, there is an "E" up by the date. The "E" means EPW. "D" means detainee. This person was believed to be involved in the 507th ambush. He is considered an EPW. On page 5, under May 10, 2003, there are two entries there at 1420. Again, those two are suspected in the 507th ambush. There is an "E" by each of their name. On the last page, June 5th, 2003, at 1130, it says "Rashed Meshquor," which was the sheik.

RECROSS-EXAMINATION

Questions by the defense:

I never saw Sergeant Pittman use any force that wasn't necessary. When I saw (b)(6) being dragged out of the cell by Lance Corporal (b)(6) other officers were there. Doc (b)(6) showed up to check on him. I understood that he was okay. In Iraq, people looked older than they might actually be. Iraq is a physically hard place on people for the most part, in the sense of aging quickly. It wasn't unusual for someone 50 to look 70.

(b)(6) was resistant to commands by PFC (b)(6) and nonresponsive. I never checked (b)(6) in a medical point of view. I am not a doctor or a corpsman.

The terror dome picture, which is Prosecution Exhibit 29, was where the troops lived. It wasn't where the detainees might see it. The writing was there when I got there.

Sergeant Pittman wasn't physically around Major Paulus or Major

Froeder when (b)(6) was dragged out. Sergeant Pittman wasn't there on any of the remaining shifts between that time and when I later saw (b)(6) when he was dead. Sergeant Pittman wouldn't have been on shift before (b)(6) started defecating on himself. We changed the schedules periodically just to give everybody a fair chance to do the midnight shift. I believe June 4 was Sergeant Pittman's last shift during midnight.

When I saw Lance Corporal (b)(6) dragging (b)(6) out, Lance Corporal (b)(6) was just following orders. (b)(6) was dragged out for sanitary purposes to clean out the cell. The reason why he was being dragged out in that manner was because it was the only part of his body that was not covered in feces.

REDIRECT EXAMINATION

Questions by the prosecution:

The corpsmen were located 200 meters from the detention facility. The Corpsmen had a makeshift medical aid station set up. The beds that they were using were made out of stretchers. It would have taken me about five to ten minutes to run to the aid station and come back with a stretcher.

RECROSS-EXAMINATION

Questions by the defense:

I did not see (b)(6) throw himself in the concertina wire. The officers informed me he had done so.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

When we were at Camp Lejeune, we were provided language cards to assist us with the language. These provided basic commands in Arabic. We used these when we were working with the detainees at Whitehorse.

I never witnessed Major (b)(6) discuss the use of any kind of punching, kicking, or palm striking techniques. He was aware that those were used. From time to time, he would come visit the jail and witness the process of making a prisoner stand up. I have seen Sergeant Pittman use those techniques. I have seen Sergeant Pittman punch a detainee, use a palm strike on a detainee, and also kick detainees. I never specifically saw him use these techniques on (b)(6).

On 6 June around 0100 in the morning, I was awoken because (b)(6) had died. I went out to where his body was. He was still naked at that time. He was not covered in feces. Prior to removal of his body, it was washed and put in a body bag. I do not know if he had been moved or not been moved from where Lance Corporal (b)(6) had left him.

I am not sure who ordered the sleep deprivation. It was a procedure that was in place when I took over. I did discuss it with Major (b)(6) the HET, and they all seemed to be fine with it. Major Paulus was in charge while (b)(6) was there. Major Paulus also saw the techniques of punching, kicking, and palm striking the detainees. He never objected to them. Lance Corporal (b)(6) and Sergeant Pittman had the most experience handling prisoners because of their civilian job. So they taught us techniques to control prisoners and make them go where you wanted them to go as far as moving them.

The purpose of the striking was to cause pain so that detainees would get up and the pain would stop.

Corporal (b)(6) USMC, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Corporal (b)(6). I presently reside in (b)(6). I am a member of the reserves, assigned to 2/14. I used to be assigned to 2/25 located out of Gargen City, New York. I deployed in support of Operation Iraqi Freedom towards the end of March. I went to An Nasiriyah, Camp Whitehorse. Initially, I was the ammo tech. I helped set up field ASP and guard in that area and made sure whoever came to Camp Whitehorse got the ammunition they needed.

I eventually went to work at the detention facility. The guard force was set up with rotating shifts. There were approximately three Marines on a shift. From 3 June to 6 June 2003, my shift consisted of Lance Corporal (b)(6) and Lance Corporal (b)(6). I was the senior member of the shift.

(b)(6) was quiet. He really didn't move much. I remember (b)(6) because he mostly laid down and that he defecated on himself and that he later ended up dying.

Part of my duties as the senior member was to make entries in a

logbook. Prosecution Exhibit 38 is a copy of the guard logbook. On page 2 of the document, I made an entry on 030605 at 2340. My entry was "EPW # 0310037 defecated on himself again, was cleaned, vitals checked, and returned to sleep." This entry referred to (b)(6).

I am aware of the 50/10 technique. From my understanding, this process is where an EPW would stand for 50 minutes and would lay down or be seated for ten minutes. This was employed at Camp Whitehorse. I remember (b)(6) was laying down and continuously moaned as if he was sick. I thought he might be in pain due to his bowel movements.

I observed an individual placing his hands on an EPW in order to get that EPW to adhere to the command that was given. I never saw any member of my team punch or kick or palm strike (b)(6). I have seen people grabbing (b)(6) to move him from one place or another.

CROSS-EXAMINATION

Questions by the defense:

I did not receive any formal training in handling EPWs. I did receive pointers here and there from individuals who had been there before I had come. When I first entered the detention facility as a guard, I remember Staff Sergeant (b)(6) walking me around and showing me how the facility was run. Sometimes the EPWs might not be compliant. I understood that we could use force to move prisoners if it was necessary to move them.

With regard to the entry that I made in Prosecution Exhibit 38 at 2340 on 030605, Lance Corporal (b)(6) cleaned (b)(6) after he defecated on himself. One of the docs checked (b)(6)'s vital signs. I thought (b)(6) was suffering from diarrhea, which other Marines have suffered from.

I recall a sheik brought into Camp Whitehorse. I do not remember anybody searching the sheik. At some point when the sheik arrived, we had to secure our position due to protestors coming. Everyone had to put on their battle gear. Everybody had to man their positions. Sergeant Pittman put me on the roof of the facility. Sergeant Pittman was very active in running around, making sure the perimeter was secure. That was a scary time.

There were times EPWs or detainees would show up and get medical attention if they had wounds or things of that nature.

During the course of handling EPWs, I would occasionally have to hit them on the leg to get them to move. That was necessary force in my opinion. I didn't receive specific instructions from anyone as to exactly what I could do to move an EPW. My understanding was, don't go crazy and don't just beat people for no reason. Any force that I saw used was necessary and not excessive.

I have seen people be strip searched. It was often times hard because of the language barrier. Goom was the Arabic word we used to get people to stand up. I can't remember any other Arabic words.

On 3 June, when (b)(6) came in, I think I was working the 2000 to 2400 shift. On the 4th of June, I believe I worked the same shift. On 3 June, I didn't feel there was any reason to contact a corpsman for (b)(6).

I relied on Sergeant Pittman when the alert sounded because of the protestors.

REDIRECT EXAMINATION

Questions by the prosecution:

I remember Lance Corporal (b)(6) telling me that we could give the prisoners a shot in the leg to get them up, if necessary.

EXAMINATION BY THE COURT

Questions by the military judge:

The purpose to give the EPWs a shot in the leg was to get that EPW to move if they would not move.

When I had (b)(6) cleaned after he had defecated on himself, he was in the recreation yard. It was unusual because he had defecated on himself. I had never experienced an EPW who had done so. I do not specifically recall being around when (b)(6) was moved out to the yard. From what I remember, he was the only detainee that was in the yard from 2000 to midnight. (b)(6) was naked at the time. I remember asking why he was out in the yard. I was told it was because he had defecated on himself. (b)(6) didn't move much, but he moved about five to ten feet. I did not actually see him move. I had a corpsman come check on him at 2340. I don't remember specifically what the corpsman said, but it may have been something like, He's okay.

REDIRECT EXAMINATION

Questions by the prosecution:

When I first saw (b)(6) he was his back, if I'm not mistaken. I don't know how he moved because I didn't observe him move. The next time I saw him, I believe he was on his side.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I received some pointers from people on how to work with the detainees. Some of the pointers included Lance Corporal (b)(6) telling me about giving an EPW a shot in the leg with your hand. I was told to make sure my weapon was pointed in a certain direction. I was to ensure the EPWs had their food and water. The pointers were basically how to keep a safe environment for the Marines and to make sure the EPWs were taken care of.

I believe I learned the 50/10 technique from one of the interrogators. It was common for the EPWs to be sleeping at night. The EPW would be subject to this 50/10 when they first came into the facility.

There were two cells inside the building for the detainees. There was a third room that was for the guards. The recreation pen was out away from the two cells. There was concertina wire that enclosed the recreation pen. If you were to take a detainee from the holding cell to the recreation pen, he would remain within the concertina wire. (b)(6) couldn't have gotten out of the recreation pen on his own. The guards watching the cells could also view the recreation pen from their post.

Lance Corporal (b)(6) USMC, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is PFC (b)(6) USMCR. I am currently assigned to Fox Company, 25th Marines. I have been in the Marine Corps reserves just under three years. The highest rank I received in the United States Marine Corps Reserve was lance corporal. I am a PFC now because I had gotten an Article 15 for failure to report an accident that I had seen when I was overseas in Iraq that involved Sergeant Pittman. I entered into a pretrial agreement

and pled guilty to that charge at NJP. I am testifying under a grant of testimonial immunity.

I was recalled in support of Operation Iraqi Freedom in March of 2003. Prior to being called up, I was working as a corrections officer for the Rensselaer County Sheriffs Department.

I arrived in Iraq the first week of April. I was originally assigned with Fox Company and transferred over to H&S Company because of my MOS as an admin clerk. I was assigned to Camp Whitehorse near An Nasiriyah, Iraq. When I arrived there, I was assigned to work at the detention facility there. I believe I started working there 8 April 2003. I continued working there about two and a half to three months. Major (b)(6) was the OIC. The SNCOIC was Staff Sergeant (b)(6). Staff Sergeant (b)(6) took over as SNCOIC because Staff Sergeant (b)(6) went home due to a hernia.

Sergeant Pittman was one of the NCOs that worked there. He arrived at the detention facility at the same time I did. Sergeant Pittman told me that he was a federal corrections officer working in a federal prison.

The detainees were brought in from the capturing unit. At one point, we were going out to get them ourselves. Once we received them at the facility, they were subject to a strip search. Typically, the detainees were flex cuffed with sandbags over their heads.

During the strip search, the EPWs hands would be placed on the wall forcefully. Their clothes would be removed after an initial check for contraband. If no contraband was found, the subject was automatically strip searched. Sergeant Pittman and myself did the bulk of the strip searches because the two of us had the most experience in doing it. During the strip search, we were searching for any unauthorized item, like drugs or anything that could be used as a weapon. From that point, their clothes were put back on. The bag would be put back on. The flex cuffs were put back on. They would be escorted into a holding area. It was then deemed if they were going to participate in the 50/10 or if they were just going to sit down.

We were told at some stage throughout our time at that facility that the 50/10 process would be utilized. Our supervisors got this information from the HET individuals.

One of the terms we used was goom, which meant stand. If they didn't stand, we had to physically stand them up. To do this, we

would nudge them with our feet, kick them in thigh area with our knees, and punch them in the legs. The purpose of this was to administer some sort of pain to get them to cooperate with the directions that were given.

A guard shift consisted of four hours. It was six guards attached to an eight-hour shift. They split it between four hours. Originally, one person would be a roving guard and walk around the outskirts of the facility. The other two would sit and watch them. That didn't happen. We basically sat in the breezeway and watched the EPWs. At least one guard was required to keep an eye on all EPWs at any one time.

During the 50/10, a sandbag is still on the head. The flex cuffs are still on the wrist.

I have seen Sergeant Pittman do the things such as punches, kicks, and knees to get people up during 50/10 on numerous occasions. My shift consisted of myself, Sergeant Pittman, and Lance Corporal (b)(6). The 50/10 process would end for the prisoner once the HET interview was complete, and the prisoner would become part of the general population. If the HET didn't get the information out of the prisoner that they wanted, the 50/10 would continue for that prisoner.

On 3 June 2003 at about 2000, Weapons Company brought in (b)(6) along with two other prisoners. Sergeant Pittman told me that these people were suspected to have something to do with the 507th ambush. The first person that was brought to me was one of the two brothers. We called the brothers (b)(6). I conducted a strip search of the two brothers. Nothing of significance happened with these individuals. After the search of each brother, they were escorted into the holding area with flex cuffs and a sandbag over their heads. They were taken to do the 50/10 technique.

(b)(6) was resistant in going where we wanted him to go. Once we got him to the inprocessing area, the sandbag was removed and he was asked if he spoke English. He said nothing. The flex cuffs were removed. His hands were forcefully put on the wall. He was told to remove his clothes by hand gestures. He reached out and grabbed my hand forcefully with a pretty strong grip.

After (b)(6) grabbed my hand, Sergeant (b)(6) slapped his hand down away from me. After I am released, Sergeant (b)(6) and (b)(6) delivered a number of blows to (b)(6) in the arms and the sides of his ribs. At that point, (b)(6) put his hands up in a defensive nature to cover himself. I then backed away

from the whole incident. I said, enough, enough, enough. Let's get this guy done so we can get him out of here.

(b)(6) recovered from that incident. I asked him if he understood what was going on. I think he figured out what was going on. I then removed his robe. I inspected it.

I then told him to remove his boxer shorts. He grabbed my hand again. I can't remember which one it was. Sergeant (b)(6) again reach out and slapped his hand down. At that point there, they were delivering strikes to him again. This time, he fell right to the ground and kind of curled up into a ball.

We got (b)(6) up again. We got his underwear off of him. I told him I wanted him to lift up his testicles so I can inspect under his testicles. I look and see nothing. At that point, he is told to open up his mouth. He wouldn't open up his mouth. At that time, Doc (b)(6) came over and opened up (b)(6) mouth physically. I looked inside and couldn't find anything.

I then told him I wanted him to spread his cheeks so I can inspect his anal area. I demonstrated again myself by bending over. He didn't get the gist of that either. So Doc (b)(6) spun him around and push him over. I looked and didn't see anything. At that point, I gave his clothes to him. (b)(6) was moving very slowly.

After he got his clothes back on, the sandbag was put back on his head and flex cuffs were put back on. I then escorted him into the holding area. On his way into the hold pen, I believe he tripped over the concertina wire and we fell to the ground. At that point, he came out of the flex cuffs. I still had his left hand. While on the ground, he tried for force his arm back from me. I forced his arm back up to maintain the grip on it. I then asked for another set of flex cuffs, which I put back on him. I then put him in the center of the room and left.

The next time I saw (b)(6) was that next day. When we got there, we were told that (b)(6) and the two brothers weren't cooperating with the 50/10 and that they were giving them a real hard time. When I came on my shift, I ordered (b)(6) to get up. He did not comply. He was lying on the ground. I kicked him in the foot a couple of times. I might have kicked him in the shin. He still didn't get up. At that point, I reach down and applied a pressure point right behind jaw and neck area. He didn't comply with that either. I then grabbed the back of his head, took him by the ridge of his nose to get him up. That didn't work either. He did not want to get up. Sergeant Pittman

was present during this.

I finally grabbed him by the back of his arms and pulled him up. I gave him a couple of shots to the side of the leg with my knees. (b)(6) stood there for a while. At some point, he started wondering around in the room and got his robe hung up in the concertina wire. I told Sergeant Pittman that this guy was going to fall face first into the concertina wire if we didn't get him out. Sergeant Pittman agreed. We both went in to get him. We pulled the robe out of the wire. I turned (b)(6) around. Sergeant Pittman gave him a backhand to the chest area.

As I was moving (b)(6) back to the center of the area, (b)(6) was telling me, Why? Why? Why? He was kind of crying to me. I said, Why? And he says, My children. My children. He told me he had eleven children. I said, What about those people that were in the ambush that you got this weapon, what about their children? At this time, I am standing to the left of him. We are in the center of the room. I then saw Sergeant Pittman strike (b)(6) with his foot in the chest area, sending him back to the ground. I walked over to him and I picked him up. I told Sergeant Pittman that we needed to get out of there before we ended up hurting this guy. We both exited the room and went and sat back down.

During the time that me and Sergeant Pittman are dealing with (b)(6) we were pretty angry with him. I was angry with the fact that this guy more than likely was involved in the death of the soldiers from the 507th. We were also angry about being there. We were aggravated with (b)(6). He wasn't cooperating. We needed to get this guy to stand because that's what we were told to do, and that's what we were trying to do.

Later on, I took (b)(6) outside to the recreation area. At that one point, I told him to remain standing. When I walked away, he collapsed down to the ground. He's not bagged or cuffed or anything at that point because they had just got done eating. I went back and grabbed him around the Adam's apple and told him that he is going to do what we tell him to do. I let go of him and told him to sit up. At that point, he sat up and I exited the cage. I ended up through a thing of water in his direction. He wound up getting it. He took the cap off, took a drink of the water, and put it back down on the ground. I sat and watched him.

He was laying there moaning and groaning. I decided to walk back into the cage. I stood over him and asked him what was the matter with him. He motioned towards his left side. I straddled over him. I felt around his chest area. And he kind of grimaced when

I did that. I walked back out of the cell area he was in. After a couple minutes, I saw Sergeant Pittman. I told him that I thought (b)(6) needed to see a corpsman because he was complaining about his chest. Sergeant Pittman said (b)(6) will see medical later on. Nobody went and got a corpsman on my snift.

Prior to (b)(6) dying, I never told anyone about the hits, punches, and kicks that (b)(6) received. I never heard Sergeant Pittman say anything to anybody.

Prosecution Exhibit 44 for identification is an architectural sketch of the holding facility at Camp Whitehorse. I am writing my name at the top of this exhibit. Using a red pen, I am writing (b)(6) at the top. I am now placing an "H1" where I saw Sergeant Pittman kick and give the backhand to (b)(6). I am placing an "H2" where (b)(6) was when I saw him grimacing and having problems with his chest.

The next time that I observed (b)(6) after the 4 June shift was the following evening. I basically watched him lying on the floor. He was not required to do this 50/10 technique at this time. I don't remember having any physical contact with him that evening other than maybe giving him some water. I didn't see any physical contact between Sergeant Pittman that evening with (b)(6).

Prosecution Exhibit 44 contains two holding pens where the capturing units would come in and drop the people off to us. The EPWs would be strip searched at the bottom of the holding building that's in the middle of the diagram. The holding buildings were sectioned off with concertina wire. I am using a black marker to show where the concertina wire was. I have drawn a rectangle with a line coming out of the center of it to represent a SAW we had. Up in the top left-hand corner, I have drawn a rectangle with squiggly lines to represent the area where the belongings of the EPWs are to be kept.

At that time that (b)(6) was there, Major Paulus was the OIC. He had been the OIC roughly two weeks.

Prosecution Exhibit 7 for identification is a photograph of (b)(6). It is a fair and accurate depiction of how he appeared the last time I saw him. The last time I saw him was the early morning hours of the 6th. He had just died. I was asked to go down to assist in finding out what the problem was.

Prosecution Exhibit 7 for identification was offered and admitted as Prosecution Exhibit 7. The military judge noted the defense's

objection.

Questions by the prosecution continued:

Prosecution Exhibit 27 is the EPW building where we lived and the prisoners also lived. This is a view from far away from the camp.

Prosecution Exhibits 27, 28, 30, 31, 32, 33, 34, 35, 36, and 37 for identification were offered and admitted as Prosecution Exhibits 27, 28, 30, 31, 32, 33, 34, 35, 35, and 36 absent objection from the defense.

Questions by the prosecution continued:

Prosecution Exhibit 28 is a photograph of our troop billet area where we lived. There is a photograph on the wall that says "2/25 Terror Dome." Myself and Sergeant (b)(6) put that sign on the wall long before from (b)(6) was a prisoner.

Prosecution Exhibit 30 is the entrance way to where we take the new detainees and put them in these two holding pens. Where the men are setting is the breezeway area where we would sit and watch the detainees in the buildings. To the right of that is where we would do the strip searches in the right-hand building. With a red pen, I am drawing a rectangle on the diagram to indicate the area we conducted the strip searches.

Prosecution Exhibit 31 is another angle of the holding pens leading into the breezeway area that we would walk the EPWs through. The green thing is something to wash your hands with.

Prosecution Exhibit 32 is the other side of the reck yard going down the porch-type area where we lived leading to the EPW holding area.

Prosecution Exhibit 33 is the same angle without the porch view. You get a better shot of the actual holding pen.

Prosecution Exhibit 34 is a photograph of the holding pen from the opposite angle.

Prosecution Exhibit 35 is one of the holding cells that we kept the EPWs in. You can see the concertina wire stacked two high with the center piece. On the other end, you can see another piece of concertina wire and debris. The concertina wire was stacked two high to prevent them from trying to escape.

Prosecution Exhibit 36 is one of the holding areas with the

concertina wire stacked two high. There are a bunch of cast iron bed frames at the rear door to prevent them from trying to get out.

Prosecution Exhibit 36 is a rear photograph of a holding area where there is concertina wire stacked two high with a bed frame in the center of the room. The bed frame was utilized as a bathroom for the EPWs. They didn't go outside.

On 5 June 2003, I was watching the prisoners. I was sent out to go on a mail run. I was gone for quite some time. I came back and helped distribute the mail. I was told that the sheik had arrived and that Sergeant Pittman needed me up there. They cleaned out one of the bathrooms that the HET were doing there interviewing in. He was more or less on the left-hand side of that. There were a couple of Marines that were dispatched to us to watch this individual. When I got over there, they were getting ready to leave. Sergeant Pittman was in there with him. With a blue pen, I am drawing on the diagram where was it was that I saw the sheik.

When I went over to where the sheik was, I was supposed to assist Sergeant Pittman because we were going to strip search this individual and put him in the general population with the rest of the people. We escorted the sheik over to the strip search area where we did a full-body search. From that point, he was put into the holding area. I am drawing a red "S2" on the diagram to indicate which holding area the sheik was in at that time. We brought him into the holding building and started administering blows to the outside portions of his legs. We did that for retribution for his people putting up a fight against our people. That's just the way it went.

Myself, Sergeant Pittman, and Sergeant (b)(6) participated in this kneeing of the sheik. Sergeant (b)(6) might have hit him in the belly or arm or something. I don't remember exactly where. All me and Sergeant Pittman did was knee him. I felt I had justification for what I was doing. I felt that it was part of what was expected of us at that point. Sergeant Pittman told me that the sheik was going to get the full effect. Other prisoners in the camp didn't get the full effect like the sheik did.

As far as I can recall, the sheik was supposed to turn himself over. He didn't turn himself over. His people put up a fight. I don't know whether or not they had gotten word that they were coming prior to this accident taking place. But they wound up saying that the sheik's people were coming to get him out of the facility. We had him in the holding area and we kneed him and put

some pain on him.

After this incident with the sheik, we were told the sheik's people were definitely on their way down there to get him. It was pretty much nerve racking because they put up a fight when they went to get him. They killed a couple of his people. Everybody was put immediately on the berm. All of the Marines in our area were told the get dressed, put their gear on, grab their weapons, and get on the berm. That was the only time I saw the sheik. He was gone soon thereafter.

Prosecution Exhibit 44 for identification was offered and admitted as Prosecution Exhibit 44 absent objection from the defense.

CROSS-EXAMINATION

Questions by the defense:

I weigh about (b)(6) When I was in Iraq, I weighed about (b)(6) I try to stay in shape. I am a correctional officer in a (b)(6) (b)(6) I was (b)(6) when I joined the reserves. I am (b)(6)

I never received any training of EPWs prior to going to Whitehorse. Major Paulus gave a brief class on the law of war. We also received the 5S's and a T class, which was probably about five to ten minutes long. I had to rely on my training as an officer. There was no SOP for that unit. My job was just to guard and watch over the EPWs.

When I was strip searching somebody, I had to concentrate on whatever I was strip searching. My crew at Camp Whitehorse was Sergeant Pittman and Lance Corporal (b)(6) The force that I saw Lance Corporal (b)(6) use to get one of the EPWs to do something was necessary force. It was only done to get people to comply. The force and things that I used to get someone up when I had to get them up are things I learned to do in (b)(6) at my facility where I worked (b)(6) It is okay in (b)(6) where I work to be able to put my hands on someone if they don't comply. If someone is not going where they need to go, I can put my hands on them. The contact that I saw with the shots to the arm and things that had to be done, that was just necessary force that needed to be done at the time.

The 50/10 procedure is something the HET instituted. My orders were to make sure these people got up until they were questioned to make sure they would be more compliant or more easily interrogated by the HET.

I am testifying here today under a pretrial agreement. My pretrial agreement is one where I got NJP. I was facing a total of eight charges. I plead guilty to negligent dereliction of duty. The other charges were dismissed. I was reduced in rank, 45 day restriction, and a fine, and I agreed to testify here today.

I grabbed (b)(6) by the neck. I am aware that he had suffered some injuries to his neck, maybe even a broken neck. I knew I was the only one that had grabbed his neck.

When (b)(6) came in, I was told I was going to be the one to strip search him. In the processes of strip searching him, he grabbed my hand. I was shocked. That had never happened to me before. I also strip searched the (b)(6). At the time (b)(6) grabbed my hand, the (b)(6) had already been removed. When my hand was grabbed, Doc (b)(6) and Sergeant (b)(6) hit him in the sides, and (b)(6) went down. Sergeant Pittman wasn't present when this occurred. I felt Doc (b)(6) and Sergeant (b)(6) were doing what they had to do to defend me from (b)(6) grabbing my hand.

The procedure to get these detainees to get their clothes off was difficult, frustrating, and dangerous. During the strip search, the detainees had full use of their arms and hands. The limit of my Arabic speaking abilities was goom. If they didn't do what we wanted, we had to use necessary and reasonable force.

When I wanted (b)(6) to take his shorts off, he grabbed my hands a second time. At that time, Doc (b)(6) and Sergeant (b)(6) took control of him again. He took more shoots to the ribs and maybe some to the stomach, and (b)(6) went down. (b)(6) picked himself back up, and we continued with the search. When it came time to open his mouth, he didn't want to do that either. I remember Doc (b)(6) being there and forcing his jaw down, which was necessary to make sure there wasn't some kind of weapon or something inside his mouth.

When (b)(6) was being searched, someone was covering him with a weapon as well. After the strip search, he got his clothes back, a bag was put back on his head, and he was flex cuffed. We then transported him to the holding building labeled "H1." As we were transporting him, he tripped. I ended up going down with him. I had control of his left arm when he went to the ground. How he came out of the cuffs and how he tripped, I can't remember. I then forced his arm back up behind his back.

On July 6, 2003, I made a statement to NCIS. I recall stating

that the flex cuffs came off of (b)(6) and (b)(6) was fighting me. We weren't throwing blows at each other, but he was forcing my arm back. That's what I considered fighting.

I recall testifying that Sergeant Pittman kicked (b)(6) in the chest. I didn't mention that to NCIS. I didn't mention a (b)(6) to NCIS either.

(b)(6) was pretty resistant from the minute he showed up. He grabbed me twice during the inprocessing. He got out of his flex cuffs, and I had to take control of him at that time.

(b)(6) arrived at Camp Whitehorse 3 June. The next time I saw him was the morning of the 4th at 0400. Sergeant Pittman wasn't present during the strip search. He was with one of the (b)(6) brothers in the holding area.

When my shift started on 4 June. I was told by Sergeant Pittman to go in the cell and get (b)(6) up for the 50/10. (b)(6) wouldn't get up. The Slim Jims got up with no problem. With Mr. (b)(6) I said goom goom, which didn't work. I kicked him on the foot or leg area a couple of times. I applied pressure points to the back of the jaw and neck area. That didn't work. I again tried another pressure point with grabbing by the back of the head and placing a hand under his nose and try to lift him up that way. That failed me also. Then I just lifted him up by the back of his arms. Up to this point, I was using necessary force in my opinion. I was the only Marine in the cell with (b)(6) I came out of the cell after (b)(6) was up.

(b)(6) was ^{WA} ~~WA~~ ^{CSA} ~~CSA~~ wandering around inside the cell and got stuck in the wire. Sergeant Pittman and I went in and got him out of the wire. I might have hit him at this time and Sergeant Pittman gave him a backhand to the chest. (b)(6) kept saying Why? Why? Why? He also said, I have my children, my children. He told me he had 11 children, which I found out later that he didn't have any children. I said something to the effects of, What about the people in the convoy and their children? This conversation is taking place in English. At this point, I think Sergeant Pittman kicked (b)(6) with the side of his foot. I then said, Let's get out of here before we hurt this person or words to that effect.

Later on, Sergeant Pittman told me to take (b)(6) out to the reck yard. (b)(6) complains to me about his chest. I palpated the chest to see what's wrong with him. I asked him what was the matter. He kind of just grimaced to me and indicated by lift up his arm and grabbing at his sides that his chest was bothering

him. He doesn't respond to me in English. I passed this information on to Sergeant Pittman.

When I grabbed (b)(6) by the throat, he was lying on the ground. I told him to get up several times. He still didn't get up. At that point there, I got frustrated, which was my mistake. I did grab him by the throat, which I told NCIS. I then told him that he will do what we tell him to do. I then let go of him at that point. Grabbing (b)(6) by the neck was not an authorized move that I learned anywhere in the police department.

The military judge decided to recess the court for the evening.

The court-martial recessed at 1640, 25 Aug 2004.

The court-martial was called to order at 0827, 26 August 2004.

Questions by the defense continued:

Appellate Exhibit XLIV is the layout of Camp Whitehorse back in June of 2003. When I saw (b)(6) the last time in the early morning hours of the 6th when he had died, he was back in that rear holding pen.

I looked over my statement prior to testifying yesterday, and I reviewed over my testimony from the Article 32 hearing which was held on February 2, 2004. I was placed under oath at that proceeding prior to testifying. The statement I reviewed was the one that I gave to NCIS on July 6.

During my inprocessing of (b)(6) did not speak a single word in English. I indicated previously that H1 is where I took him after the inprocessing. My testimony was "I'd like to say he tripped," and when I say that, I don't know whether he tripped or not. I just know he went down. And I went down and followed him to the ground. I indicated that he was so strong that he was pushing me back with his left arm that I had a grip on. I would like to say I had my right hand on his left arm, but I can't recall because it was over a year ago. As far as my testimony today, it's not as good as what it was closer in time to these incidents.

When he went down to the ground, he came out of the flex cuffs, and as I stated before, he landed with one hand down on the ground. He broke his fall with his right hand. I had to get a hold of that right hand to re-flex cuff him. To do that, I had to reach over him and get that hand because he was resisting me. To

do that, I probably had to adjust my positioning. I had to exert a lot of pressure because this was a strong man pushing me back and resisting me. I had to get control of him. I had to get a hold of that right hand that's out there because that's the one that's loose. When I get that, his body went forward. I was on him, but I was not lying on top of him. No words of English were spoken.

I was sort of upset with him at this point in time. For the most part, most of the EPWs or detainees that were brought there were pretty violent. I indicated before almost all of them were violent criminals and murderers. We had been told that there had been other people from the 507th situation that had been brought in previously.

(b)(6) had already grabbed me twice and slipped his flex cuffs. I placed him back here in this H1 area. As I said, he tripped over this piece of concertina wire that laid in the center of the room. I'm relatively sure he either tripped or he was struck and he went to the ground. I'm not really sure to be honest. I know the man went to the ground. My previous testimony was "I'd like to say he tripped." The concertina wire was coming at an angle. Either his gown got hung up in there or his foot got hung up in there. Pittman and (b)(6) were over here to my left-hand side. I walked into the room. The man went down to the ground. And I wasn't concentrating on exactly every single thing that was taking place at that exact moment. All I know is the man started to fall. I went down with him, and maintained contact.

I was walking him through. I was controlling his movement. The way we're taught to control his movement is to grab his hands, put on flex cuffs, and grab his arms so I've got control of him. He had a sandbag on his head. I have never had a sandbag on my head, but I'd like to say that you probably could see out of them. There were two different styles of sandbags we had there. We had the burlap bags and we had the sandbag that we utilized that was made of some form of a nylon material and it was green. Whatever type of sandbag he had on at that time, I wouldn't be able to tell you. I would imagine you can breathe with those on. People didn't suffocate with those on.

During the entire process where this takes place, I had to re-flex cuff him. I got the flex cuffs on him while he was on the ground. To do that, I had to maintain his body on the ground. No English was spoken. I didn't see him at any other given time until I came back on shift. This all occurred on 3 June when he was inprocessed. I come back on duty at 0400 on the 4th. When I initially went in, I was supposed to get him up. Sergeant Pittman

asked me to go in to do that. (b)(6) was still back in H1. The (b)(6), the two brothers were also in there. They were in the front portion of the area. If you look at that exhibit, they weren't in H1. They were in the other section, which is essentially between the concertina strips there in the middle of the building. So there's three people in that holding room. The (b)(6) were together.

My testimony was I went in to get (b)(6) up. That's when I initially kicked him. I kicked him in the foot, whether or not it was with the side of my foot or with the front of my foot, I can't recall. I asked him to get up first and then I kicked him a couple times. I don't speak Arabic, and (b)(6) had not spoken English. He would not get up. That's when I gave the neck hold. I don't know what the correct terminology is for that. I pushed my two fingers in there, but it didn't get his attention. He didn't speak any English. He didn't say anything.

I learned that particular pressure point at my sheriff's department in (b)(6). It is a technique that I was told that I could utilize when I need someone to comply with an order. I'm also trained in martial arts to some degree. I took it when I was a kid. I maintained my interest in that subject matter through the Marine Corps. That's about it.

When that didn't work, that's when I grabbed the back of his head and I put the flat of my palm up against the ridge of his nose. I actually took my hand and would go like this to utilize this bridge part of my hand to get up underneath the bridge of their nose, which I was hoping would get him up. I'm left handed. I wasn't trained to keep my dominant hand free. The move that I indicated yesterday was I put my right hand behind his head. My left hand was underneath the nose, and I lifted up. You get underneath the nose which causes pressure on the nose going this way and the idea is to get the person to stand up. That didn't work. So I just picked him up by the back of the arms. No English was spoken. That application of force was learned to control riots and protesters. This entire time, I was back there with (b)(6) by myself.

This area that (b)(6) is in, H1 on Appellate Exhibit XLIV, has got concertina wire all around it. He's cordoned off with concertina wire, which extended all the way through. This diagram is inaccurate in that this string would go all the way through. To get through there, you'd have to move it.

Later in that shift, which is June 4, 0800, is when I indicated that he got hung up in the concertina wire. He got hung up to the

left side of the building, if you were looking at it going this way. When I say "hung up," he did not fall into it. That was the purpose of us going in there and getting him out so he would not fall into it. His clothes were hung up in there. He was wearing a robe. I don't know whether or not Sergeant Pittman had assisted me in getting him out, but I remember I was involved in getting him out of the wire. It was pretty sharp wire.

I indicated that Sergeant Pittman struck (b)(6) in the chest area with his hand. I don't know whether his hand was open or closed. Sergeant Pittman was facing somewhat away from Mr. Hatab, I would imagine. Sergeant Pittman didn't say anything when that happened. I testified that Sergeant Pittman's a pretty quiet guy. Then I had a conversation with (b)(6). He just started saying, "Why? Why? Why?" I don't know why he said it. He wasn't talking directly to me. He was talking about his children. He says he had 11 children. He breaks out into English, and I talked to him in English. I'm frustrated and that's when I mention about the kids of the 507th. I wasn't screaming at him. I said in a conversational tone, "What about the children of the 507?" I can't remember exactly how my words were spoken, but I do remember speaking to the man about that incident.

Then I see a foot in his chest. Sergeant Pittman has a pretty large foot. He struck the man in the chest area and (b)(6) fell to the ground. I guess you can say I'm speculating as to how the kick was performed when I testified at the Article 32. As I said in my statement, I don't remember seeing the kick other than to see the point where it's coming from my eye and making contact with the body. Sergeant Pittman didn't say a word that I can recall. That's when I said, "Let's get out of here before we hurt him, or words to that effect. I'd have to say everybody was angry with (b)(6)." I guess I could say I was angry. Sergeant Pittman didn't say anything before the kick or after the kick.

My next contact with (b)(6) is when we fed him around 6:40 in the morning. It was my job to get (b)(6) out. I took him out and put him into the holding pen. Then he sat down to eat chow. When they eat chow, we take the hoods and flex cuffs off.

I indicated that I was concerned about (b)(6)'s health at some point later the morning of the 4th. I said I reached down and palpated around his chest area because he was showing signs of discomfort. I was concerned about him. I spoke to him in English, but he didn't speak back to me in English. He just grimaced and moaned and groaned.

I recall testifying at the Article 32 in this matter. I recall

testifying that I asked him if he was okay. When we were out in town, a lot of them would ask us for money or ask us for water. They knew some words. Whether or not he knew a string of English, I have no knowledge of that. Even though I didn't have a dialogue, I talked to him and got no response in English. I testified that this happened probably right before my shift ended. I testified that I was concerned about it.

I grabbed (b)(6) by the neck and told him he was going to do what we tell him to do. That was a C-type grip that I used. My left thumb is on the left side of the Adam's apple. And all four other fingers are on the other side of the neck. The V of my palm is center mast on the Adam's apple. I grabbed the man. I gripped hard enough to let him feel it. I let go of him. I ordered him to sit up.

When I saw Sergeant Pittman later that morning after I became concerned about (b)(6) health, I did not tell him I gripped him by the neck. I cannot remember the time frame I testified to at the Article 32 that the neck grip happened.

The only contact I had had with (b)(6) until he was dead occurred at the inprocessing on June 3. The next time I had a shift would have been the early morning hours of the 5th. That shift was between 12 midnight to four in the morning. As far as I know, (b)(6) was sleeping. If myself or Sergeant Pittman did go in there, it was to give the man water. That was about it.

We had a third member of our group that was assigned along with myself and Sergeant Pittman, who was Lance Corporal (b)(6). On June 4, as far as I can remember, the three of us were sitting in the breezeway. We also had at least a half dozen or so detainees in this holding area that's labeled S2. I'd have to say (b)(6) was watching them. I have no idea where he was. I'm speculating as to where Lance Corporal (b)(6) was.

When I saw Sergeant Pittman later that morning, June 4, when I'm coming off shift and said (b)(6) needs to see a doc, I didn't tell him about the neck grab. I didn't tell him about the palpating ribs either. I just said (b)(6) was having problems with his chest. I don't remember my exact words. Sergeant Pittman said he saw a doc yesterday, which would have been the 3rd. I don't know what the policy was. I never saw anything as far as policy and procedure goes. Whether or not the corpsman came walking through the place at that time in the morning or not, I don't know. It was routine for the docs to come through every morning, quick check to make sure everybody's fine. The doc sees anybody that needs to be seen. He had some pretty beat up people

in there.

During that shift on the 5th, midnight to 0400, I wasn't concerned about (b)(6) health at that point in time. I didn't think there was anything the matter with the man. I was informed that he had seen a doc.

I made a statement to NCIS on July 6, 2003. I had a chance to read over that statement. I signed that statement. That was closer in time to the incident. Everything now has been 18 months ago or so, and it would have been fresher in my mind back then. NCIS asked me mainly about my dealings with the individuals, including (b)(6). I indicated that I didn't hit EPWs just to hit them, that it was always done for the purpose of getting them to comply. I didn't mention anything about the incident I testified to yesterday about the sheik. They asked me about (b)(6). They didn't ask me about anybody specific except for him.

I remember stating "this statement is given concerning my knowledge of the indoctrination and treatment of (b)(6) and other EPWs at Camp Whitehorse, Iraq." EPW stands for enemy prisoners of war. I also indicated in that statement that we were given no training whatsoever and no explanation of anything at Camp Whitehorse. We were authorized to use the necessary amount of force to get them to comply with the orders given by guards. Safety of the Marines and safety of other detainees was our main concern. I recall telling NCIS that (b)(6) was fighting me and that I was on the ground with (b)(6). I indicated in my statement that Doc (b)(6) and Sergeant (b)(6) had been involved in the inprocessing of (b)(6) and that they had given him blows to the ribs. I described how I was grabbed. I described how (b)(6) was fighting me when he slipped out of his flex cuffs. I indicated what other Navy corpsmen had done with (b)(6).

I indicated in that statement that I used a neck pressure point to get (b)(6) up that first time I went into the cell. I didn't mention anywhere in that statement to NCIS that I checked him or palpated his ribs at any given time to see if he was injured, which was pretty important. At the time I gave the statement, (b)(6) was dead. Any injury he might have received was pretty important, but I didn't mention that. I didn't mention the kick to the chest by Sergeant Pittman. I didn't mention the back hand by Sergeant Pittman.

In regards to my grabbing (b)(6) on the morning of the 4th when I'm coming off of my shift from using the reck yard, I just said I grabbed him by the neck. I told them what I did. I told them I

grabbed him by the neck which I know to be a pressure point. In a law enforcement atmosphere where your life is in danger, there's certain things that you've got to do. As far as that being an authorized technique just to get somebody to move, I'd have to say it's not authorized.

I then stated that I walked out of the reck yard, sat in my chair, and threw (b)(6) my jug of water. I was pretty upset with him. At 0745, I told Sergeant (b)(6) that (b)(6) was being an asshole. I made Sergeant (b)(6) aware that (b)(6) was fed. I didn't indicate in my statement anywhere that I told Sergeant Pittman that we needed to get (b)(6) to a doctor. My statement regarding my compassionate feelings for (b)(6) are not reflected in my statement of July 6. I was concerned about his health, as I've testified here in court. I was so concerned that I asked Sergeant Pittman to get a doc for him. My statement on July 6 after the incident, after I know (b)(6) was dead, is "fuck this guy."

I also state in there that HM-3 (b)(6) checked out (b)(6). This was back on July 6, 2003 when I wrote my statement. I stated "I don't believe I ever struck (b)(6) in any phase of his custody." I also said, "If I did strike (b)(6) it was in the thigh with my knee or in the belly area with my hand." I don't consider grabbing the neck or telling him he's going to do what I tell him to do striking a detainee. I also stated "The only force that I or other guards used on EPWs at Camp Whitehorse was the amount necessary to make them comply with orders given."

The kick I described by Sergeant Pittman came out before the Article 32. I did get a pretrial agreement, which was signed just before the Article 32. The Article 32 hearing was the first time I testified. NCIS brought me there like four or five times, but that was the one time I did give a statement.

After (b)(6) dies, I went to see NCIS several different times down in the Kuwait area. They had my unit from Camp Whitehorse pretty much kept together down there at Camp Commando. Myself and Sergeant Pittman got put some place else for awhile. While I was down there, I had an opportunity to talk to various people about what happened. At that time, rumors were out that (b)(6) had broken his neck. I thought I was the only one who grabbed his neck. That caused me a lot of concern. I did get very worried about that. I was definitely a suspect in this whole situation. This man was dead and I had him by the neck. I actually went to Doc (b)(6) and asked him if you grab someone by the neck like this, can that injure them. I had a lengthy conversation with Doc (b)(6) on that. I didn't tell him I grabbed him by the neck.

I also talked to Lieutenant Commander (b)(6) who was the doctor for the battalion. I asked him if you grabbed someone by the neck, could it cause a problem. I was concerned. I didn't mention Sergeant Pittman or these activities I testified to here to Lieutenant Commander (b)(6). At one point I talked to Lieutenant Colonel (b)(6).

I might have said to Doc (b)(6) "This can't be happening to me. I've got a family. I've got a career." We were all worried. We were being dragged back and forth from Iraq to Kuwait all the time. Nobody knew what was going on. I knew this man was dead and I had his neck in my hands at one point. The rumors were that it was a broken neck.

In regards to the incident involving the sheik, I remember speaking about the sheik yesterday. I never mentioned the sheik to NCIS. I never mentioned the sheik to Doc (b)(6). The only person I mentioned the sheik to was my attorney that I had spoken to which I told them everything and anything I knew about the whole ordeal. I spoke to my attorney in October, November 2003. Between that time, I didn't say anything to anybody about the sheik.

I indicated that the sheik was kept in a building down there labeled S1. That's where I first met him. Sergeant Pittman was there. There came a time when he had to be strip searched or put in with the general population. My understanding was that was for retribution. The whole time I was there, no one else had had this kind of special treatment. There came a time where he was put in general population. I indicated it was a normal strip search. There was no striking the sheik anywhere during this strip search. He complied with our orders just fine. There was no problem out there when he was naked, no problem getting his clothes off that I can recall, no problem getting his clothes back on that I can recall.

I indicated that myself, Sergeant (b)(6), and Sergeant Pittman took some shots at him. Sergeant (b)(6) was there. That took place in the holding building that is labeled S2. That didn't last very long. I indicate that shortly after that, I believed the protestors were coming. We all went and got our battle gear. All I had was a 9 mill. My T/O weapon was being utilized some place else. I wouldn't say I was late getting there to get my weapon. I know I had to go back to the living quarters to get my flak jacket and my helmet. Then I was assigned to protect the troop building. I was put out in front.

When I was with the sheik, Sergeant (b)(6) Sergeant Pittman,

and myself were together in there with him the whole time. We had no translator in the room with us. I don't know if the translator was there at the time. As far as I know, no one else witnessed this incident with the (b)(6). No one came up to me later to talk to me about it because I didn't discuss the sheik ever again. I believe he left the next day. I don't even know whether or not the sheik was an enemy combatant or a criminal. I don't know what his status was there.

I received an NJP. At the time that I accepted that NJP and agreed to testify, I was in a pretty tight spot. I told them what I did and I was in a situation where I could lose my civilian career. I could lose my career as a corrections officer if I was convicted. If I was convicted, I could go to the brig. It would have a big impact on my family. I'd have a federal conviction that could follow me a lifetime. Up until that point in time, I had never told NCIS or anyone else, never talked to anybody about the (b)(6) other than my attorneys in October or November of 2003. I never mentioned Pittman. I never mentioned the hit to the chest or anything else.

Back on July 6th when I made my statement to NCIS, I swore to tell everything I knew about EPWs and detainees and what happened to (b)(6). They didn't ask me certain things. That was closer in time to the incident than today obviously.

REDIRECT EXAMINATION

Questions by the prosecution:

On the morning shift with Sergeant Pittman from 0400 to 0800 on 4 June, when I go into the cell with (b)(6) and do that pressure point underneath the ear, the bulk of the general population was in this holding area where the S2 is. The two (b)(6) (b)(6) were in the front portion of where the H1 is. At night, we would keep prisoners in the holding buildings.

I said I was working in the holding building where (b)(6) was. Myself, (b)(6), and Pittman were sitting out in the breezeway between the two holding buildings. When I went into that holding building that first time with the pressure point, Sergeant Pittman had directed me to go in there. When I did the ridge technique up under the nose of (b)(6) that was shortly after the pressure point on the neck.

I also described a time when I gave (b)(6) two shots to his outer thigh. I believe I said that I struck him in the legs when I had lifted him and put him in the center of the room. I think

Sergeant Pittman was sitting in the breezeway area. I then possibly struck him in the thigh area when we had to get him out of the wire. Sergeant Pittman was in the room with me at that time.

Prior to (b)(6), I had struck other prisoners in a similar fashion during this stand up/sit down procedure. The prisoners were flex cuffed and sandbagged. Sergeant Pittman was present when I would do that. I did see Sergeant Pittman actually do that on prisoners as well.

At the time that I walked up to (b)(6) and grabbed him around the Adam's apple area, Sergeant Pittman was my supervisor. Sergeant Pittman was near me at the time that I had this conversation with (b)(6) about his children, him saying "why, why."

I remember (b)(6) asking me about something I had said in a previous NCIS statement regarding striking (b)(6) in the belly. I was trying to basically say that I could have struck him in that area. I wasn't sure whether or not I did. Other things could have happened that I can't remember.

I do know someone by the name of Sergeant (b)(6). He was the translator that we wound up getting towards the time we were leaving. I can't remember when he actually showed up at the camp.

The sheik didn't speak any English that I knew of. To my understanding, he was supposed to be a high profile prisoner. I didn't know what the reasoning was for him being there. I recall Sergeant (b)(6) purpose as being there to assist with some type of dialogue with the EPWs. We finally got him over there when Major Paulus came on. I cannot recall whether Sergeant (b)(6) was there while the (b)(6) was there, but he was probably in the area some place. He was working at Camp Whitehorse. He was the only translator we had at the facility, other than the line company Marines that had a translator with them that came in to drop guys off.

The first time I ever told anybody related to the government in this case about the incident with the sheik was at the Article 32 hearing. Colonel Gallow had asked me if I had seen any unnecessary strikes or unnecessary abuse of EPWs. I didn't want to say anything to him, but I told him about it because I was told that I had to tell them the truth. Colonel Gallow was the Article 32 investigating officer.

Up to that point where I submitted my pretrial agreement, my

attorney submitted a proffer. That proffer delineated specific things that I saw and participated in and things that I saw Sergeant Pittman do. That proffer didn't say anything about the sheik though. So that had nothing to do with my pretrial agreement. That pretrial agreement was in effect at the time that I testified at that 32.

(b)(6) had gone through my training that I had received as a correctional officer in the state of (b)(6). Those pressure point techniques that I had learned in the correctional system were used on people that wouldn't comply with what I was trying to get them to do. There are no prisoners that I work with in the (b)(6) Correctional Facility that I flex cuff and sandbag and try to make stand up all night long.

RE CROSS-EXAMINATION

Questions by the defense:

The first time I mentioned the sheik was at the Article 32, which was in February of this year. I never mentioned it to NCIS. When I was down there to talk to NCIS, I was told that I was suspected of hitting EPWs, to include (b)(6). I didn't mention the (b)(6) to anybody in my command at anytime. I did mention it to my attorney. On July 6, 2003, they asked me about EPWs that I'd seen getting hit. I didn't know what the (b)(6) status was. The reason I didn't include the sheik in there was because of my legal conclusion, that I didn't know whether he was a detainee or EPW.

I didn't know whether (b)(6) was an EPW or a detainee either. The topic of conversation was about him. I mentioned all of my contact with (b)(6) that I could recollect. I mentioned all the contact that I could recall concerning (b)(6) and Sergeant (b)(6) as well. There was no mention of Sergeant Pittman, no mention of the kick, no mention of the ribs, no mention of the back hand. The reason I didn't mention the (b)(6) was because of my determination that this could not possibly apply to him because I wasn't sure what he was. I didn't ask somebody if this would apply to a (b)(6).

When I grabbed (b)(6) in the C grip to the neck and the Adam's apple, Sergeant Pittman wasn't with me. I did that by myself. I wasn't told by Sergeant Pittman to grab him by the neck. Later, when I determined (b)(6) needed to see a doc, I had to wait until I found Sergeant Pittman. I didn't tell anybody about grabbing the neck until I talked to (b)(6). I asked (b)(6) that if you grab somebody by the neck, could that cause a problem. That was the first time I told anyone about grabbing his neck.

EXAMINATION BY THE COURT

Questions by the military judge:

I indicated several times that at some point after I had examined (b)(6) when he was complaining about his ribs and groaning on the ground that I told Sergeant Pittman that I thought he needed to see the doc. When I felt around (b)(6) ribs, he grimaced when I touched him. That's when I stepped out of there and just waited and watched him. The guy wasn't moving. He wasn't doing anything. He was just laying there. So I let Sergeant Pittman know the guy needed to be seen by somebody. I wanted him to be seen by a doctor because he was indicating to me that he was having a problem. It's hard to say what I was motivated by. I don't know whether or not I was motivated by compassion. It had to be compassion because I kind of felt bad about the whole thing. I kind of felt bad about grabbing the guy. I kind of felt bad about him being an old guy sitting here.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I talked about this 50/10 procedure that was being used. I never heard any of the officers discuss it. I believed that they knew what was going on because they had to know. They were there. They knew we were keeping these guys standing. They may have been present one time or another when we were forcing prisoners to stand up, but I don't recall specifically. The officers knew about this 50/10 procedure. The HET people were the ones that told them.

I don't remember ever having any specific discussions with any of the SNCOs about this 50/10 procedure. (b)(6) knew about the 50/10 thing. He was in charge of the guard force. He knew what we were doing. He was present one time or another when we were keeping a prisoner on his feet. When the detainees or prisoners were being taken from the holding building over to what I have marked as S1 on the diagram, we would take them over there. We would get them up, put a sandbag on their head, zip tie them, and walk them out of there. When we got to where the head was, the HET guys would take them in there and tell us to stand outside and wait. They'd close the door and the guy sat in there. Most times the door was closed, but you could hear a lot of yelling and screaming and banging going on. They wouldn't take the flex cuffs and the hood off. The detainee was still flex cuffed and hooded when they came back out. I never saw any of the HET members strike or assault any of the detainees. The door was closed.

They wouldn't let us in.

I'm a corrections officer in my civilian occupation. I was given some training on when and where and how I can use pressure points for compliance techniques. I was never instructed that there was any age limit above which a prisoner could not be subject to pressure points or compliance techniques. While serving as a correctional officer, I have used compliance techniques on a handcuffed prisoner if that individual was not cooperating or was resisting. In the jail environment, most of the time we use the pressure point when we have to take somebody down to the ground. As far as making them stand up and stuff like that, we don't really use it. There's probably at least six or seven other guys there when something like that goes on in the jail. It's a controlled environment.

When I'm working as a correctional officer, I have to move prisoners from one area to another. If they're restricted housing unit inmates, they're cuffed. We're given instruction on when we move a prisoner and how to maintain contact with the prisoner. We're taught an arm's length away and kind of to the rear. We don't maintain contact on them, but we could if we wanted to. Generally speaking, we don't because they're cuffed and shackled. The inmates that we are dealing with, we know them. We have a booking sheet, a psychological sheet, and a medical sheet on them. We know exactly who we're dealing with and what we're dealing with. We have all their in-house infractions and things of that nature.

I've never heard the terms "vernacular angle" or "peroneal." I have heard the term "infra-orbital." I can't remember the definition of what the word is, but I have heard the word before.

When I moved the detainees, in particular (b)(6) back into the holding building after he was strip searched, I indicated I had a hand on him because he already resisted a number of times. He latched onto me a couple times and had to be taken down. I walked him into the room, maintaining contact with him. He also had a bag on his head and flex cuffs. In the process of moving Mr. (b)(6) I was guiding him so he'd know where to go because he couldn't see.

In my correctional capacity in my civilian job, we would try to follow someone down to the ground. I wasn't given instruction on how to go to the ground. I guess it's just an implied process. They want you to maintain contact with the person so you're not losing control of that individual. When (b)(6) went down, I purposely went down with him. I did not land on top of him. It

is a fair statement that as I was hanging onto his left hand, I was putting pressure to hold him down on the ground and to hold his left hand up behind his back. I'd say I used about 30 or 40 percent of my body weight on him. As he went down, he caught himself with his right arm. He didn't make any noises when we hit the ground.

(b)(6) went down to the ground in the holding building marked H1. I grabbed him and lifted him up by his arms. I got him recuffed and picked him up by his upper arms, which were behind his back. He wasn't bleeding anywhere after the fall. His manner of walking didn't change at all. I didn't observe any injuries at all because of the fall.

Staff Sergeant (b)(6), USMC, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Staff Sergeant (b)(6). I'm a Special Agent with the Naval Criminal Investigative Service stationed here at Camp Pendleton.

I was deployed in support of Operation Iraqi Freedom. During that deployment, I was called upon to take part in an investigation into the death of a (b)(6). In the course of that investigation, I was called upon to take some photographs of his body. We were called in the afternoon or early evening hours of 6 June 2003. I actually took some photographs of (b)(6). This was at a hospital in the local neighboring town. I forget the name of it. He was in a morgue that didn't have an air condition and was in a body bag. It was very hot. It was probably hotter inside the morgue than it was outside. The morgue was near Camp Whitehorse. I saw how the body was taken out in order to be photographed. The body was in a body bag on the floor of the morgue, and it was drug out by the foot section of the bag. There was about a four-inch lip or raise in the platform from the room of the morgue to the floor outside where he was photographed.

We opened up the body bag, laid the body bag to the side, leaving the body inside it, just unzipping to expose the body. We wanted to preserve any kind of evidence that might be on the body itself. I then proceeded to take digital photographs of every perceivable angle that I could think of at the time, just to kind of preserve that state because I didn't know when we would have a chance to autopsy the body. After I photographed the body, the photos were

put on a floppy disk. Our equipment was destroyed by sand and heat. The only thing that we had left at our disposal was floppy disks. We preserved the disks as best we could.

Prosecution Exhibit 7 is a photograph that I took of (b)(6) outside the morgue around 1830 on 6 June. Prosecution Exhibit 8 for identification is a full body display of the victim as he was laid out on top of the body bag. That is a fair and accurate depiction of how he appeared when I took the photograph. Prosecution Exhibit 9 for identification is another one of the series of photographs that I took of the victim. It depicts the right side of his face, head, and neck area. That is a fair and accurate depiction of how (b)(6) looked on that occasion. Prosecution Exhibit 10 for identification is the victim's left face, head, neck area, and shoulder. It is a fair and accurate depiction of how (b)(6) looked on that occasion. Prosecution Exhibit 11 for identification is a photograph of the victim's upper thigh to the head region of the body. It is a fair and accurate depiction of how (b)(6) looked on the day I took the photograph.

The trial counsel offered Prosecution Exhibit 11 for identification without objection by the defense. Prosecution Exhibit 11 was admitted into evidence. The bailiff published the exhibit to the members.

Questions by the prosecution continued:

Prosecution Exhibit 12 for identification is a photograph that I took of the victim on the night in question. It depicts his head through his upper thigh taken of to the right side of his body. It is the opposite side from Prosecution Exhibit 11. It is a fair and accurate depiction of (b)(6) on the day I took the photograph.

The trial counsel offered Prosecution Exhibit 12 for identification without objection by the defense. Prosecution Exhibit 12 was admitted into evidence. The bailiff published the exhibit to the members.

Questions by the prosecution continued:

Prosecution Exhibit 13 for identification is another one of the series of photographs I took of the victim. It depicts his right side. It's a close-up of his torso above his naval and below his chin. It is a fair and accurate depiction of how (b)(6) looked on the day that I took the photo.

The trial counsel offered Prosecution Exhibit 13 for identification without objection by the defense. Prosecution Exhibit 13 was admitted into evidence. The bailiff published the exhibit to the members.

Questions by the prosecution continued:

Prosecution Exhibit 14 for identification is a photograph I took of (b)(6) body after we rolled him onto his right side. It's depicting his back above his buttocks up to his head. It is a fair and accurate depiction of (b)(6) on the day that I photographed him.

The trial counsel offered Prosecution Exhibit 14 for identification without objection by the defense. Prosecution Exhibit 14 was admitted into evidence. The bailiff published the exhibit to the members.

Questions by the prosecution continued:

Prosecution Exhibit 15 is a photograph I took of (b)(6) body. It depicts his lower back through his feet. It is a fair and accurate depiction of his body on the day in question when I took his photograph.

The trial counsel offered Prosecution Exhibit 15 for identification without objection by the defense. Prosecution Exhibit 15 was admitted into evidence. The bailiff published the exhibit to the members.

CROSS-EXAMINATION

Questions by the defense:

I showed up to take these photographs the early evening hours of 6 July. None of the pictures that I took disappeared. We had problems with our camera equipment throughout our investigation out there. We took a lot of precautions to preserve these photographs on a floppy disk. We did have problems with the equipment in the sand and heat, but these photographs were not affected. I honestly don't know how many pictures I took of (b)(6) that evening. I just tried to cover all the angles and preserve what evidence I could.

I indicated that we had difficulties with our camera equipment. I would have preferred to use a memory stick for a digital camera. It holds more photographs. Typically a floppy disk will only hold five.

When I arrived to take pictures of the body, it was in the local morgue. It was about a 20-minute drive from the Whitehorse detention facility. I don't remember the name of the town. When I arrived there, I don't recall an American doctor by the name of (b)(6) there. I do remember the body being taken out of the morgue. Some of the Marines I was traveling with took the body out of the morgue. I don't believe any of them were doctors. There was just the one body in the morgue. It was by itself, and there were Marine guards posted. I wasn't there previous to that. So I wasn't aware of where the body was previous to my arriving there to take these pictures. The only thing I heard about the body at that point was just the general story that I had received, that it was at the Whitehorse detention facility. I had a rough idea of where it was within that facility, but I hadn't seen the body until I arrived at the morgue.

It was very hot in there, no air conditioner, no refrigeration. I believe it was early evening of July 6 when I took the pictures. I'm not entirely certain about the July 6 date.

I had the body dragged out of that morgue for these photographs. I'm unclear if it was the Marines that were guarding or the Marines that had transported me to the location, but some of the junior enlisted Marines pulled the body out. When they pulled the body out, they were just grabbing the bottom of that bag and sliding him out. The body was right inside the door, and they pulled him directly outside the door. They pulled him out five or six feet. There was a drop from the morgue to where I took the pictures. If I remember correctly, there was about a four-inch lip on the door. So he would have dropped approximately four inches. I have no idea where that body was before then. I didn't have anything that I used to confirm that that was (b)(6) I didn't have a photograph of him.

REDIRECT EXAMINATION

Questions by the prosecution:

On the day that I took the photos, from my understanding, he died about midnight, so I took the photos roughly about 18 1/2 hours later. I am not sure of the date 6 July, but I do remember it being 18 hours later.

RECROSS-EXAMINATION

Questions by the defense:

When (b)(6) body bag was opened up, I do recall various fluids, which I assumed were body fluids because normally the bodies are placed in a clean body bag or cadaver bag. There were also numerous flies present in the bag.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I do not know what the fluid is that appears at the bottom right corner of Prosecution Exhibit 13. I visually inspected the body. I didn't notice a head wound.

Colonel (b)(6) U.S. Army, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Ma'am, please state your full name

A. Dr. (b)(6)

(b)(6)

Q. And, ma'am, you are a Colonel in the United States Army, correct?

A. Yes, I'm a Colonel.

Q. Ma'am what's your billet?

A. I am the Armed Forces Regional Medical Examiner for UCOM and CENTCOM, assigned to the Europe Regional Medical Command in Landstuhl, Germany.

Q. And that's where you work, ma'am, in Germany?

A. Most of the time, yes.

Q. Ma'am, what's your educational background?

A. Following graduation from college with a B.S. in medical technology, I entered medical school, graduating in 1986. And I did a year of clinical internship at Tripler Army Medical Hospital in Hawaii.

Q. What's a clinical internship?

A. It's an internship that covers all areas of medicine.

It is, essentially, a rotating or transitional internship.

Q. Okay. So after the clinical internship, what else, ma'am?

A. Then I did a residency for four years in pathology, obtaining board certification in both anatomic and clinic pathology.

Q. Okay. Ma'am, residency, what's that?

A. Residency is sub-specialty training, pathology being the sub-specialty training. And so that's where we, essentially, studied the body, disease processes, and injuries using scientific methods at both a gross level and a microscopic level.

Q. Ma'am, when you say you're board certified in pathology, what do you mean?

A. Well, there's an American Board of Pathology that will give board certification after a varying number of days -- usually three days -- of examination, and that's providing you meet the requirements of training and numbers of cases at an accredited institution.

Q. All right, ma'am. So after the residency, did you have any further education?

A. Yes. After spending two years as a staff pathologist in Korea as an associate medical examiner for the Armed Forces Medical Examiner System, I went on to forensic pathology fellowship training in Washington D.C. at the Armed Forces Institute of Pathology and the Office of the Chief Medical Examiner in Baltimore, Maryland.

Q. And what was this forensic fellowship training? What were you learning during that period?

A. Essentially, most of the time, I spent at the medical examiner's office in Baltimore performing forensic autopsies on cases. And it's, basically, the study of pathology as it applies to the law.

Q. What is pathology?

A. Well, as I said, it's the study of bodily disease processes and injuries using various scientific methods.

Q. Is there a difference between regular pathology and forensic pathology?

A. Well, yes. The forensic pathology is -- focuses on the autopsy -- the forensic autopsy, and this is on cases

that apply to the law, usually involving accidents, suicides, homicides, sudden unexpected deaths, and currently, we're doing combat related deaths.

Q. Ma'am, what degrees do you hold?

A. Aside from medical degree, as I said --

Q. So you are an M.D.?

A. Yes, I am.

Q. Ma'am, how many -- you performed -- obviously, performed autopsies in your career, correct, as a forensic pathologist?

A. Yes, that's correct.

Q. How many have you performed?

A. Over a thousand. And I'm currently performing about 150 cases a year.

Q. Have you testified before in your career?

A. Yes, I have.

Q. How many times?

A. Over 20. I've really lost track after that.

Q. What types of cases?

A. Most of these are criminal cases, homicides for military courts. As part of the Armed Forces Medical Examiner System, most of our cases are military, involving active duty, dependents, and civilians that are under DOD or federal investigation. And, occasionally, I testify in federal court, depending on the jurisdictions of the case. And years ago, early in my training, I testified in civilian courts.

Q. Ma'am, when you are performing an autopsy -- well, what is an autopsy?

A. Well, an autopsy -- basically, there's two kinds. There are hospital autopsies that involve pretty much just the autopsy itself. In my area, I perform what we call medical legal investigations, which consists not only of the forensic autopsy but scene investigation and evaluation. The forensic autopsy involves identification -- positive identification of the remains, essentially evidence collection, depending on the case, of all the evidence associated with the body. We do full photographic documentation, external examination, and we're also looking for patterned

injuries for correlations, depending on questions asked.

Q. Well, let's -- I guess when you're performing an autopsy -- ma'am, what are you looking for when you do an autopsy?

A. Well, it varies depending on the case, but, basically, we're looking for any abnormalities, whether they're due to natural disease or injuries.

Q. Ma'am, you've heard of the terms "antemortem" and "postmortem"?

A. Yes.

Q. What's antemortem mean?

A. Antemortem are usually when we look at, say, injuries or some finding on the body that occurs either around the time of death, which would then be perimortem, or prior to death.

Q. How about postmortem; what does that mean?

A. Postmortem refers to certain changes due to decomposition after death, sometimes movement and handling. Oftentimes, postmortem injuries have a different appearance than the antemortem injuries.

Q. Ma'am, as a forensic pathologist, can you look at an injury and determine whether it's antemortem or postmortem?

A. Oftentimes, yes. Most of the time, perhaps.

Q. How is it that you're able to tell the difference?

A. Basically, on the location, the quality, the type of the injury, the amount of hemorrhaging or bleeding associated with it, and what we call vital reactions. And this we can also see on a microscopic level, vital reactions showing that there's initial -- body's response usually with the immune system responding to an injury. And that changes over time with the healing process and the scarring process.

Q. Now, ma'am, if you -- for example, you were talking about microscopic. What do you mean by microscopic?

A. Well, as part of the internal examination, we assess the inside of the body, the various organs, and we will collect tissue, depending on what we're seeing, from those specimens and also specimens from the skin. And those are processed, sliced at very thin levels. They're stained. And then we can evaluate them at a

cellular level under the microscope.

Q. Ma'am, you talked about -- you used the words, I believe, "blunt force injury"?

A. I have, yes.

Q. Okay. What is a blunt force injury, ma'am?

A. A blunt force injury, as opposed to a sharp force injury -- and we categorize them in those ways -- are injuries that occur with impact with a rather broad surface area, unlike a sharp knife or a sharp blade of some type. There are different types of blunt force injury, depending on what's being used, how it's applied, that can vary from contusions, which are essentially bruises where the body's impacted, and it causes bleeding at various levels underneath the skin. And that will look like your typical bruise.

You have abrasions, which are when an object is actually -- has a scraping motion on the skin and actually scrapes levels of the skin off and results in what we call abrasions or, basically, scratches. And then lacerations, which are somewhat different than cuts in that it's actually the tissue breaking from the impact of the object on the tissue, and it tears away as opposed to being cut away. And then also, we consider fractures as blunt force injuries.

Q. Fractures to bone, you mean?

A. Yes.

Q. Ma'am, you've heard of the term "lividity"?

A. Yes, I have.

Q. What's lividity?

A. Lividity is a postmortem process occurring after death where the blood vessels will start to get leaky, and the blood will start settling, usually due to gravity, in the dependent surfaces of the body, except those areas opposed to pressure. Over time, that lividity becomes what we call actually fixed, so if the body is turned over, that lividity will stay there and not go away. So it's a dark purplish discoloration.

Q. All right. Sometimes, can it be difficult to tell lividity from, like, a contusion -- an antemortem contusion?

A. Sometimes, it requires great care in assessing them.

Occasionally, we can't tell the difference, but oftentimes, we can. A lot of it depends on the condition of the body and how well preserved it is.

Q. Let's say you had a situation where a body wasn't well preserved and you're trying to tell the difference between lividity and an antemortem contusion, what would you do to try to make that determination?

A. We'll try to assess the different types of discoloration due to postmortem degeneration -- that can be based on the location of it -- trying to look for different types of discoloration that is different from what we can clearly tell is lividity or postmortem discoloration. And then oftentimes, we will excise with a blade into the tissue and actually look for hemorrhage or various vital reactions that tells us that this was an antemortem injury, say a real bruise as opposed to discoloration due to postmortem changes.

Q. And, ma'am, when you say "excise," you mean cut into the actually skin and muscle, right?

A. That's correct.

Q. Ma'am, I'm going to direct your attention to 10 June 2003. Did you perform an autopsy on that day?

A. Yes, I did.

Q. Please describe the circumstances under which you were called upon to perform this autopsy.

A. We were called by the criminal investigators informing us of a death. And under the Armed Forces Medical Examiner System, which I'm a part of, and under Title X, U.S. Code, Section 1471, this gives the Armed Forces Medical Examiner authority to perform forensic autopsies on cases that are under DOD investigation, which was the case here.

So we have a team that we put together that will deploy down range to do autopsies. In which case, after a lot of go round between CENTCOM and UCOM and deciding that it would be impossible to bring the case to us in Germany, we ended up deploying down range to Tallil Air Force Base and performing the autopsy there.

Q. And that was in Iraq, ma'am?

A. Yes.

Q. When you -- at the time that you performed the autopsy,

what information had you been given about the subject of the autopsy?

A. Basically, all we were told was that it was a death in custody. And then --

Q. What do you mean "death in custody"?

A. It was the death of a prisoner in custody under American custody.

Q. Okay. Were you given a name?

A. Not at the time. I don't believe so.

Q. Were you ever given a name?

A. I was given what was thought to be the name, and I think at some point in time that was clarified. But I had very little documentation as to what that name was.

Q. Eventually, after you performed the autopsy, you created an autopsy report, correct?

A. That's correct.

Q. And what was the name you put on the autopsy report?

A. This was (b)(6)

Q. Now, ma'am, when you showed up for the autopsy, had you been given any information regarding this individual at all regarding how he died or anything?

A. Not until we actually arrived at Tallil, where there was a Navy criminal investigator -- I believe her name was Agent (b)(6) who was asked to attend the autopsy for NCIS. And as far as I understood, the information she had -- she obtained over a phone with them was that the prisoner had been having some difficulties in terms of diarrhea and not feeling well. They took him outside, and he was found that morning dead.

Q. Were you provided any photos at that time, ma'am?

A. No, I was not.

Q. Who was with you when you performed the autopsy?

A. Well, my assistant -- my forensic assistant, who was in the Air Force at the time, a --

Q. What was his name, ma'am?

A. At the time, it was Staff Sergeant (b)(6)

Q. Okay. Who else?

A. And he's also an assistant trained in photography.

There was a Colonel (b)(6), another doctor who was also a forensic dentist and also has photography experience, and he's part of the team that I normally would travel with. Additionally, there was -- we were met by Colonel (b)(6) and -- who is a forensic pathologist also, had been the acting Armed Forces Medical Examiner for a period of time but then went to work for CENTCOM Surgeon. He happened to be stationed down there. So it's part of our policy for deaths in custody, when we're doing autopsies, we try and have two forensic pathologists there to, essentially, work on the autopsy and collaborate on our findings, more or less, quality review -- assurance review. Additionally, there were a couple of -- there was Agent (b)(6) and there were a couple representatives from the CENTCOM -- the Regional CENTCOM JAG there.

Q. Okay. Ma'am, did you actually perform an autopsy on this body?

A. Yes, I did.

Q. Please describe the condition of the body when you performed the autopsy.

A. (b)(6)

Q.

A.

Q. Now, ma'am, in performing the autopsy, what was the

first thing that you did with the body?

A. Well, we evaluated the need for evidence collection, and based on the handling -- there had been a fair amount of handling that was not under the standard chain of custody and protection. And because of all the difficult -- decomposition, we felt it was not worthwhile collecting evidence, although we did inspect all those things we could. We then photographed the body as well as we could. It was very bad conditions for all the digital equipment we brought with us, and so we did have difficulties with our cameras but got as many photos as we could.

Then we performed an external examination where I would document all the injuries and also incise -- in those areas that I thought were injury, do the incisions or the cuts with the scalpel to assess what was real and what was not. Then went on to the internal exam and, essentially, evaluated all the organs. We sectioned them thoroughly with a knife and -- basically, trying to either look for or rule out any natural disease or looking for injuries -- and then collected specimens for further microscopic examination and toxicology, which we normally will bring back with us for evaluation when we get back to Germany.

Q. Ma'am, please describe the surroundings where you're conducting this autopsy.

A. It's a pretty austere environment down range. They found an old bombed out building that someone managed to come up with an old table and rigged up some lighting. We've performed these kinds of cases before under similar conditions, so we bring a lot of what we need with us because of these conditions. However, the conditions here were considerably hotter than normal, so our digital scales didn't work. Our laptops and printers were persnickety as well as the photographic equipment. So it was a difficult, very challenging environment to work in. Aside from the fact we started at oh-dark hundred in the morning and -- but it was pretty warm by the middle of the day.

Q. And, ma'am, do you have experience working in this type of environment and doing an autopsy?

A. Yes. We'd done quite a few -- well, I wouldn't say quite a few, but we've done several cases down range, in Kuwait, early on in the war in Iraq on various types of cases, not only the deaths in custody but also various

aircraft accidents.

Q. Ma'am, when you exhumed (b)(6) body, did you observe any antemortem injuries to his extremities?

A. Yes, I did.

Q. And the extremities being the arms and legs, correct?

A. That's correct.

Q. What did you observe?

A. (b)(6)

Q. Ma'am, did you cut into any of these injuries that you observed?

A. Yes, I did. And this is how we were able to identify the depth of the hemorrhage and which ones were likely to be real and which ones were not.

Q. Ma'am, how about in the torso region of (b)(6) did you notice any injuries there?

A. (b)(6)

(b)(6)

Q. Now, ma'am, let's talk about the one on the stomach first.

A. Okay.

Q. Did you actually cut into that tissue?

A. As part of the general -- what we call the Y-shaped incision where we open up the body in the chest cavity and the abdomen --

Q. All right, ma'am. And when you cut into that tissue, what did you notice?

A. (b)(6)

Q. Was it your opinion that this was an antemortem injury?

A. That's correct.

Q. Let's talk about the injury on the back. Did you cut into that tissue?

A. Yes, I did.

Q. And what did you see?

A. (b)(6)

Q. Yes, it did.

Q. Any other injuries on the torso of (b)(6) that you noticed?

A. (b)(6)

Q. Did you notice any fractures?

A. (b)(6)

(b)(6)

Q. Okay.

A. (b)(6)

Q. All right, ma'am. Could you please describe the nature of these fractures?

A. Well, once again, these appeared to be clearly antemortem fractures. Most of them went completely through the ribs. Some of them were partially through the ribs. And there was associated hemorrhage around the areas of the break and also along what we call the

(b)(6)

Q.

A.

Q.

A.

Q.

A.

TC: Okay.

Sir, I have a --

MJ: Are you going to have her write on there?

TC: Yes, sir. And then I'm going to project it.

MJ: Let's take a short recess.

Members, if you'll step out please.

The members withdrew from the courtroom.

MJ: We're in recess.

The court-martial recessed at 1233, 26 August 2004.

The court-martial was called to order at 1236, 26 August 2004.

MJ: The court will come to order. Be seated everyone. The record will reflect that all those present when the court recessed are again present. The members are present. The witness is on the stand.

Major Francis.

TC: Sir, can I have the witness --

MJ: You may.

Doctor, if you would, step around.

Questions by the prosecution continued:

Q. Ma'am, I'm showing you Prosecution Exhibit 43. I'm showing it to you on an overhead projector. I am showing it to you on the paper itself. And, ma'am, is this a fair and accurate depiction of the average human body?

A. Yes, it's the skeletal system.

Q. All right, ma'am. And could you please mark on this diagram, using this red pen, where you saw the (b)(6)

A. (b)(6)
[The witness did as directed.]

TC: Okay, ma'am. Thank you.

MJ: Can you all see that?

[Affirmative response.]

TC: Sir, at this time, I'd like to offer Prosecution Exhibit 43 into evidence.

MJ: Do you have any objection, defense?

CC: No objection, sir.

MJ: Very well. It will be admitted and the words "for identification" deleted. You may publish it at the appropriate time. There will only be one of these, so you'll get the one when it's published. Not yet.

Questions by the prosecution continued:

Q. (b)(6)

A. Yes, that's correct.

Q. (b)(6)

A.

Q. Ma'am, can you -- from looking at an injury on a body that you believe to be antemortem, is there any way that you can tell how old the injury might be?

A. By looking at them, we can tell -- give a very -- rather broad ballpark idea of them within 24 or 48 hours or greater. But the healing process is subject to a great many variables, so this is strictly a ballpark type figure.

Q. (b)(6)

A.

(b)(6)

Q.

A.

Q.

A.

Q. And, ma'am, you said that when you conducted your autopsy, you took photographs, correct?

A. That's correct.

Q. Ma'am, I've just handed you Prosecution Exhibit 17 for identification. Do you recognize that photograph?

A. Yes, I do.

Q. What is it, ma'am?

A. It's what we call an as is photograph, that was taken as soon as we receive the remains, of the right-hand side of the remains. And we have our scale and placard in there giving our autopsy number and the date and the time and our initials.

Q. And, ma'am, is that a photograph of (b)(6)?

A. Yes, it is.

Q. And, ma'am, there's also someone in the photograph that's holding up a placard. Who is that?

A. This is Staff Sergeant (b)(6), my assistant.

Q. Is that a fair and accurate depiction of how (b)(6) appeared when that photograph was taken?

A. Yes, it is.

TC: Sir, at this time, I'd like to offer Prosecution Exhibit 17 for identification into evidence and have it published to the members.

MJ: Defense.

CC: No objection, sir.

MJ: All right. It will be admitted, the words "for identification" deleted.

You may publish it.

The trial counsel did as directed.

TC: Sir, if I may retrieve the exhibit from the witness to project.

MJ: Bailiff.

The bailiff did as directed.

Questions by the prosecution continued:

Q. Ma'am, I'm now projecting Prosecution Exhibit 17 on the overhead. You were talking about the state of decomposition of the body, and you were talking about skin slippage. Can you please, using the laser pointer, indicate to us on this photograph what you're referring to?

A. Can I leave the stand?

MJ: You can stand up and move around so you're in a better position.

The witness did as directed.

WIT: (b)(6)

Questions by the prosecution continued:

Q. The skin slippage you're pointing to, that's outside the hip there?

A. Right. We're losing the outer layers of the skin.

Q. (b)(6)

A. Yes.

Q. Can you please indicate with the pointer where it was that you saw that?

A. This photo, it is right about here and, essentially, circled the umbilicus somewhere around seven to eight -- seven by eight inches.

Q. And I know the coloring isn't that great on the overhead, but that's the pinkish/reddish area on the color photo, correct ma'am?

A. Yes.

MJ: Are you going to talk to the next one?

TC: Yes, sir.

MJ: Is that what you're going to ask her to do?

TC: Yes, sir.

MJ: Well, just throw it up there and give me a copy.

The trial counsel did as directed.

Questions by the prosecution continued:

Q. Ma'am, I'm showing you on the overhead Prosecution Exhibit 19 for identification. Do you recognize that photograph?

A. Yes, I do.

Q. What is it?

A. Essentially, here, we have the remains, the backside of (b)(6) and this was -- I believe this was a photo prior to cleaning up.

Q. That's a fair and accurate depiction of (b)(6) as of the time that photograph was taken?

A. That's correct.

Q. Ma'am, you had indicated that there was a (b)(6) (b)(6). Can you please indicate where that -- where you saw that?

A. I'm having a little trouble seeing this, but it is right about in this area here.

Q. (b)(6)
A. Yes. And I think in the photos, it looks much darker, kind of red and dark blue.
TC: Sir, at this time, I'd like to offer the exhibit into evidence and ask to publish that to the members.
MJ: Defense.
CC: No objection, sir.
MJ: It will be admitted, the words "for identification" deleted.

Questions by the prosecution continued:

Q. Ma'am, can you please indicate where you saw -- you said you saw the (b)(6)
A. (b)(6)

TC: Sir, should we just do the same procedure for all of them?
MJ: All right.

Questions by the prosecution continued:

Q. Ma'am, I'm now showing you Prosecution Exhibit 20 for identification. Do you recognize this exhibit?
A. If I can just get my bearings.
MJ: You can move around there as you need to. In fact, if you want to move over and actually look at it on the overhead, that's fine too.
WIT: Okay. I just -- I'm having a hard time seeing this. Okay. This is -- I'm sorry.
You'd like me to describe it?

Questions by the prosecution continued:

Q. Well, do you recognize it, ma'am?
A. Yes, I do.

Q. What is it?

A. This is another posterior, or back, view of (b)(6), and this is predominantly showing his -- the backs of his legs.

Q. Is it a fair and accurate depiction of the backs of Mr. (b)(6) legs as of the day this photograph was taken?

A. That's correct.

TC: Sir, at this time, I'd offer it into evidence and ask that it be published.

MJ: Defense.

CC: No objection, sir.

MJ: It will be admitted and the words "for identification" deleted.

Bailiff.

The bailiff did as directed.

Questions by the prosecution continued:

Q. Ma'am, what's that dark portion that's on the outside of the thigh there?

A. (b)(6)

Q. Ma'am, I'm showing you Prosecution Exhibit 21 for identification. Do you recognize that exhibit?

A. If I may, can I just look at that?

MJ: Again, you may feel free to move over there as you need to.

WIT: Okay.

Questions by the prosecution continued:

Q. Do you recognize that exhibit, ma'am?

A. Yes. This is also a backside posterior of (b)(6) showing the back of the left leg.

Q. All right. That's a fair and accurate depiction of

A. (b)(6) leg at the time that you took the autopsy?
Yes, it is.

TC: Sir, I ask that that be offered -- I offer that into evidence and ask that it be published to the members.

MJ: Any objection?

CC: No objection, sir.

MJ: It will be admitted and the words "for identification" deleted.

Questions by the prosecution continued:

Q. Ma'am, I'm now showing you Prosecution Exhibit 22 for identification. Do you recognize that photograph?

A. Yes, I do.

Q. What is it?

A. This, once again, is still the backside of (b)(6) showing the back of the left leg of the thigh area and knee.

Q. Is it a fair and accurate depiction of (b)(6) leg as of the time this photograph was taken?

A. Yes, it is.

Q. What are we looking at here, ma'am?

A. These are --

TC: Excuse me, ma'am.

At this time, sir, I ask -- I offer that into evidence and ask that it be published to the members.

MJ: Defense.

CC: No objection, sir.

MJ: It will be admitted and the words "for identification" deleted.

Questions by the prosecution continued:

Q. Ma'am, what are we looking at here?

A. This is the back of (b)(6) upper thigh, back of his knee area, on his left leg.

Q. And these are the incisions that you made?

A. (b)(6)

Q. Ma'am, I'm now showing you Prosecution Exhibit 24 for identification. Do you recognize that exhibit?

A. Yes, I do.

Q. What is it?

A. Posterior, back, of (b)(6) upper thighs and left -- back of the left knee.

Q. Is it the opposite leg that we just looked at?

A. That's correct. Oh, I'm sorry. That's the right then.

Q. Okay.

A. I misspoke.

Q. Is it a fair and accurate depiction of how (b)(6) leg looked when you were performing the autopsy?

A. Yes, it is.

TC: Sir, at this time, I offer that into evidence and ask that it be published.

MJ: Defense.

CC: No objection, sir.

MJ: It will be admitted and the words "for identification" deleted.

Questions by the prosecution continued:

Q. Ma'am, do you see any contusion here?

A. (b)(6)

(b)(6)

Q. All right, ma'am. Would you like to look at the original photo?

A. (b)(6)

Q.

A.

Q. All right. Ma'am, I'm now showing you Prosecution Exhibit 26 for identification. Do you recognize that exhibit?

MJ: If you want to step over to the projector as well if that will assist you.

WIT: Yeah. I'm sorry.

Yes.

Questions by the prosecution continued:

Q. And what is that, ma'am?

A. (b)(6)

Q. Is that a fair and accurate depiction of (b)(6) back at the time of autopsy?

A. Yes, it is.

TC: Sir, at this time, I offer it into evidence and ask that it be published.

MJ: Defense.

CC: No objection, sir.

MJ: It will be admitted, the words "for identification" deleted.

Questions by the prosecution continued:

Q. Ma'am, what's the -- I know it's hard to see on this --

MJ: Hold on a minute.

TC: -- but on the original --

MJ: Major Francis, hold on a minute.

TC: I'm sorry, sir.

MJ: All right. Go ahead.

Questions by the prosecution continued:

Q. (b)(6)

A.

Q. All right. Now, ma'am, at the time of the --

MJ: Are you going to have her look at more slides?

TC: Yes, sir.

Questions by the prosecution continued:

Q. At the time of this autopsy, you didn't have the opportunity to look at the photographs that were taken shortly after (b)(6) death, correct?

A. That's correct.

Q. But by the time of the Article 32, you did have the opportunity to look at those, correct?

A. Yes, just prior to.

Q. And looking at those, ma'am, were you able to find anything of significance that could help you in your determination of different causes of injuries?

A. I'm sorry?

Q. Ma'am, when you looked at the photographs, were they -- when you looked at them, were you able to -- was that able to help you in your assessment of how certain

injuries could have been received?
A. (b)(6)

Q. All right, ma'am. I'm placing up on the overhead
Prosecution Exhibit 11. This is a -- you had seen this
-- you've seen this before, correct, ma'am?
A. Yes --

MJ: And, Doctor, if it would help you to walk over to the
projector so you can see the actual exhibit.

WIT: Okay.

Questions by the prosecution continued:

Q. This is one of the photos that you looked at prior to
the 32, correct, ma'am?
A. Yes.

Q. I'm zooming in on the photo using the projector. Now,
looking at the photo -- realizing what's on the photo
itself is clearer than what's on the screen, but looking
at the photo -- and also if you could show us on the
screen -- do you see anything that's a potential pattern
injury there?

CC: Objection, Your Honor. Speculation.

MJ: Overruled.

Questions by the prosecution continued:

Q. Go ahead, ma'am.

A. (b)(6)

(b)(6)

Q.

A.

Q. Ma'am, now, I'm showing you on the screen Prosecution Exhibit 12. This was another photograph that you didn't have an opportunity to look at at the time of the autopsy, correct?

A. That's correct.

Q. But you did see it prior to the 32?

A. That's correct.

Q. Now, ma'am, this injury or this darkening that's up there by the nipple area of (b)(6) --

A. In this area on the right?

Q. (b)(6)

A.

Q.

A.

you'd expect to see them. So in the absence of --

Q. (b)(6)

A.

TC: All right.

MBR: Sir, can we ask that the ribs be traced on that picture or at least pointed out?

MJ: Can you do that?

WIT: (b)(6)

MJ: All right.

Questions by the prosecution continued:

Q. And I'm now showing Prosecution Exhibit 13 on the overhead. This is another photograph that you didn't have the opportunity to view at the time of the autopsy, correct?

A. That's correct.

Q. But you did get a chance to view it prior to the Article 32 hearing?

A. Just prior to the Article 32.

Q. (b)(6)

A.

Q. Now, ma'am, like we were talking before, sometimes

lividity --

CC: I object, Your Honor, and move to strike the last observation by this witness as speculation, sir.

MJ: Overruled.

Questions by the prosecution continued:

Q. Now, ma'am, sometimes lividity and a contusion -- can it look the same sometimes after death?

A. If you're just looking at it the way we're looking at this, it can. This has a little more reddish discoloration than what I would normally see with lividity. And the main issue is the pattern of it. It doesn't fit the overall pattern of lividity.

Q. Now, ma'am, I want to show you a photograph. This is Prosecution Exhibit 14. This is another photograph you didn't have the opportunity to view at the time of the autopsy, correct?

A. That is correct.

Q. But you did have an opportunity to view it prior to the 32 hearing?

A. Just prior to the Article 32.

Q. Are we seeing lividity here?

A. (b)(6)

Q.

A.

Q.

A.

Q. But I'm just saying to the naked eye --

MJ: Don't interrupt her.

Questions by the prosecution continued:

Q. I'm sorry. Go ahead.

A. (b)(6)

Q. All right, ma'am. The last photo I have for you, ma'am, is Prosecution Exhibit 15. This is another photograph you didn't have the opportunity to see at the time of autopsy?

A. That's correct.

Q. But you did see it prior to the Article 32 hearing?

A. That's correct.

Q. And, ma'am, looking at this photo, you had mentioned something about brush burn injuries?

A. Yes.

Q. Can we see any of that in this photo?

A. (b)(6)

MJ:

WIT:

MJ:

WIT:

MJ: All right.

Questions by the prosecution continued:

Q. (b)(6)

A.

TC: All right. Thank you.

You can take your seat.

The witness did as directed.

TC: Sir, that's all I have. Thank you.

MJ: Defense.

CC: Thank you, sir.

CROSS-EXAMINATION

Questions by the civilian counsel:

Q. Afternoon, Colonel (b)(6)

A. Afternoon.

Q. I've got a few questions for you in the sense of how this autopsy was performed. You indicated, first off --

MJ: Can I ask you, before you get started, are you going to be using the projector?

CC: I may end up doing that, sir, and I have to apologize because --

MJ: Well, I just want to know if we need to turn the lights up or not.

CC: We can turn them up now, sir, if you'd like.

MJ: Could you? Thank you.

Questions by the civilian counsel continued:

Q. Dr. (b)(6) you had indicated that you bring all your

gear down and you have your gear that you need to do an autopsy when you travel to do one, correct?

A. That's correct.

Q. And you bring all your gear, and that's real important?

A. Yes.

Q. You brought a scale?

A. Yes.

Q. A scale is real important in your line of work, correct?

A. Yes, correct.

Q. And your scale didn't work?

A. No.

Q. And you can tell a lot about an organ or an injury or something else by the scale, correct?

A. You can, but when you've had experience using the scale for a long period of time, you get a good sense of what normal weights are, and we actually practice that when we do have scales available.

Q. Okay. So you don't need a scale; you can just pull an organ out and say this is "X" number of grams?

A. Ballpark figure, I can say whether they're normally sized or not.

Q. Would you say it's very important at an autopsy to document injuries?

A. Yes, it is.

Q. It's very important that you write down what you see, because it's going to be looked at and relied upon by other people, correct?

A. Correct. Except in some cases, and based on my training, and there are different styles amongst forensic pathologists. And in my training, I was taught by a very experienced forensic pathologist who feels at sometimes -- especially in the areas with some uncertainty like decomposition, that less is best written on paper. And if -- it's also very difficult to anticipate what all the different questions and issues are going to be, and it's better to explain those issues in person rather than having things that could get you into trouble that's been written down. So that is one style. There are others that believe differently.

Q. Let me stop you right there, Colonel. It's your testimony that your style is, don't write it down, because you might be questioned about it later, and you don't want to be stuck with what you wrote down; is that correct?

A. Not in those terms, no.

Q. Okay. You want to be able to talk about it, kind of, one on one, right? You want to be able to explain what you just wrote? Rather than document exactly what you saw, you kind of keep it open, and then you can talk about it one on one with somebody; is that fair?

A. No. It's more documenting what you feel is significant based on the perspective at the time. And, generally, I document those things that I feel are significant. I won't document things that I feel are not significant, particularly things like sometimes significant negatives.

Q. Okay. So when you went down to do this autopsy on (b)(6) you knew nothing about the situation other than he was found dead, right?

A. Correct.

Q. And what you would find or not find, everything was important, because you didn't have an idea of what might have resulted in his death, correct?

A. That's correct.

Q. And so it was very important to document every injury, correct?

A. Every injury that I could appreciate, yes.

Q. And to help you with that, you not only take -- write down what you notice and what you see and what it means, but you have photographers, right?

A. That's correct.

Q. And those photographers, they work at your direction, because you're doing the autopsy, right, Doctor?

A. That's correct.

Q. And so if there's something that you need to take a picture of, you can do that, right?

A. Normally. Not necessarily in this circumstance.

Q. All right. You didn't take any pictures of the (b)(6) (b)(6) that you indicated you saw, correct?

A. That's correct. Whether or not we attempted to, I don't know. But, generally, I --

Q. Doctor, did you take pictures of the (b)(6) yes or no?

A. I can't say for sure. They could have been taken. We had several photos that didn't come out, but I think it's not likely that I would have.

Q. But it's important to document those injuries, document your findings, because people are going to rely on what you saw, correct?

A. It's important to document the findings that aren't going to be easily misinterpreted. Sometimes when you're dealing with the internal exam portion and you have, let's say, a section of ribs that has already been excised away, sometimes it's easy to misinterpret those things. So I tend to take less internal photographs as opposed to some others.

Q. Okay. Let me make sure I understand this, Colonel. What you're saying is you don't want your photograph of what's actually there misinterpreted in case a piece of the rib is dissected out, and that might be misinterpreted later, correct?

A. Well, it's generally for internal injuries. I've had experiences where photographs are -- on the internal portion of the exam are misinterpreted.

Q. Okay. Let me ask you another question, Colonel. As far as microscopic or toxicological results on an autopsy, those are very important, right?

A. That's correct.

Q. Now, you weren't able to get those in this case, right?

A. No. We had several logistical difficulties. We could not obtain ice from the Air Force for our specimens. We had a little cooler. We'd normally get ice. The refrigeration really wasn't very cold. We ended up -- when we were leaving, we were to -- a C130 was to meet us on the tarmac. They had all of our stuff palletized. We were waiting on the tarmac, and there was a period of several hours -- they kept saying the plane was going to be here; the plane was going to be here. Apparently, at the last minute, they diverted it, and it was longer by the time we got that pallet back. And it was the middle of the day, and there was really no where we could get refrigeration at that time. So our specimens that were

already decomposing, producing a lot of gases, essentially, blew up into little bits in the pelican case. So we lost all of that tissue.

Q. So all the tissue samples you took, correct?

A. That's correct.

Q. Now, you didn't dissect out a piece of rib for that; did you?

A. Actually, I did.

Q. Okay. You're telling me there was a piece of rib in that cooler?

A. I believe so. I would have been considering that for microscopic.

Q. And if you had, you would have put that in your autopsy report; wouldn't you?

A. That I --

Q. That you dissected out a piece of rib. Wouldn't that be in your autopsy report?

A. If I performed microscopics on it, yes, I would have described it as rib. But I don't normally say what specimens I collect.

Q. Oh, you wouldn't say you took out a piece of rib so -- dissected out a piece of rib so you could evaluate it? You would not put that in your autopsy report?

A. No. That's standard procedure.

Q. (b)(6)

A.

Q.

A.

Q.

A.

Q.

A.

Q. (b)(6)

A. Yes.

Q. And in order to get that, you need to dissect out a piece of that rib and examine it, don't you?

A. To be able to see it microscopically, yes.

Q. Right. And that's important because you can then determine the age of a fracture or injury, correct?

A. Much more closely than you can grossly. That's correct.

Q. Did you notice the osteoblasts on this particular injury?

A. We did not have the ribs to actually evaluate.

Q. Okay. You didn't have the ribs to evaluate. In fact, what happened was, this body, after your autopsy, was exhumed July 3d of that year; isn't that correct?

A. That's -- I don't know the exact date, but I know it was exhumed.

Q. Okay. So you have the autopsy on June 10th, correct?

A. That's correct.

Q. Whatever samples you took -- and you don't know if you took a rib sample, correct?

A. That is my standard way of operating. Basically, I take it standardly, but I can't recall if I actually would have or if I actually did.

Q. Okay, Colonel. And then sometime later, you guys went, "Oops," and you had to pull the body back out, and that was July -- at sometime, right, Doctor?

A. I can't say. This was exhumed by NCIS. It could have been July. About a month later, I think they told me, but I don't know for sure.

Q. And you didn't look at any of those body parts that were taken out from the exhumation?

A. No. They did not go to me.

Q. You don't know where they went, do you?

A. There were some tissue that was sent to the Armed Forces Medical Examiner's Office for toxicology, which was the purpose for exhuming the body.

Q. But they also took out a ribcage too, didn't they? Part

of the sternum, didn't they?

A. I have no idea what they did.

Q. Okay. Now, you're testifying about this autopsy that you made conclusions on, and you have no idea what happened to what was exhumed on this particular body, right?

A. That's correct.

Q. And you have no idea actually who you were doing an autopsy on in the first place; isn't that correct?

A. Other than what I was told by the NCIS agents.

Q. You indicated on direct that part of what your team does is you're -- and I forget how you put it -- the Medical Legal Examination Team, something like that. What was that, sir -- ma'am? I'm sorry.

A. Medical Legal Investigation.

Q. Okay. And that's -- one thing you do is -- it's important for that team to grab information from "the crime scene," correct?

A. That's correct.

Q. Because you can tell a lot about, sometimes, what happened to someone based on the atmosphere, the climate, and the conditions of wherever they were found, correct?

A. That's correct.

Q. But none of that was done in this case?

A. No, we were not able to in this case.

Q. And you haven't reviewed any statements of any witnesses in this case?

A. No. I would not release my reports until I did get statements.

Q. Statements from --

A. Well, essentially, it was a summary of the NCIS, basically, verifying the name and that, in fact, this happened and, essentially, the situation there.

Q. Okay. So you relied on some kind of report from NCIS before you write your report?

A. Well, before I release it. I write it up sooner than that.

- Q. Okay. And you actually wrote four autopsy reports in this case, correct?
- A. I believe there was one autopsy report and two addendums.
- Q. Okay. The latest one you wrote was in February; is that correct, of this year?
- A. I believe so, yes.
- Q. And that was a final autopsy report addendum, correct?
- A. That's correct.
- Q. And that's where you altered your findings within this autopsy report to reflect what your testimony was at the Article 32 and the questions that you were asked about how this autopsy was performed, correct?
- A. There was a section where I did make changes in terminology to clarify what my perspective was and what I saw, yes.
- Q. If you had done that on the first one, you wouldn't have had to change that; isn't that correct?
- A. That's correct.
- Q. One reason you want to make sure you document everything you find is because sometimes you've got to talk about it a year or so later, correct, Doctor?
- A. That's correct.
- Q. But your policy is not to do that, because you can remember from a year ago exactly what happened on that autopsy; is that correct?
- A. Well, no, that's not what my -- the reason for my policy for that.
- Q. Well, I think the reason you gave me for your policy was that you'd rather talk about it one-on-one. You don't want to, kind of, hem yourself in on whatever your finding is, or it might be misinterpreted. Your actual physical finding might be misinterpreted by somebody.
- A. I document what I feel is significant, and if there are issues that come up that can't be answered at the autopsy, it's better to discuss those issues rather than, you know, essentially, something getting misinterpreted.
- Q. (b)(6)

A. Yes.

Q. That's not in your autopsy report, is it? Any one of the four that you did?

A. Well, in the areas -- I described that as associated hemorrhage.

Q. (b)(6)

A.

Q. So that's what that means to you?

A. That's correct.

Q. Someone looking at it doesn't know what that means, correct?

A. Well, I would think others may.

Q. (b)(6)

A. That's correct.

Q. It's important -- you showed some slides where you had cut into bruises on the back of people's knees, correct?

A. That's correct.

Q. And that was an attempt to show what might be recent hemorrhage or bruise from something that wasn't, correct?

A. That's correct.

Q. So if you sliced into the ribs and went into the intercostal muscles, you could see how deep the bleeding was, correct?

A. Correct.

Q. But there's no mention of that in any of your four autopsy reports, correct?

A. That's correct.

Q. (b)(6)

A.

(b)(6)

Q. Okay. Do you actually dissect through there and say, "Well, I can see it grossly. I don't need to go any deeper, and this is fine"?

A. Yes.

Q. Okay. And you wrote that in -- you documented that?
A. I'm sorry?

Q. And you documented the depth of that hemorrhage, correct?

A. No. I documented that there was associated hemorrhage.

Q. How about the osteoblasts and the osteoclasts, did you document that as well?

A. No. There was not a microscopic examination.

MJ: Let's take about a 10-minute recess. We've been at it about an hour and a half. The court's in recess.

The court-martial recessed at 1329, 26 August 2004.

The court-martial was called to order at 1345, 26 August 2004.

MJ: The court will come to order. Be seated everyone. The record will reflect that all those present when the court recessed are again present. The members are present. The witness is on the stand.

Mr. Tranberg.

CC: Thank you, sir.

Questions by the civilian counsel continued:

Q. Colonel (b)(6) you described the rib fractures that you saw?

A. Yes.

Q. And what was that description, ma'am; what's the right side?

A. Four -- on the right, four through seven.

Q. All right. And left side?

A. Four and five.

Q.

(b)(6)

A.

Q.

Okay. Let's take a look at that right side. I think this right side is four through seven, correct?

A.

That's correct.

Q.

(b)(6)

A.

Q.

And you documented that in your autopsy report, ma'am?

A.

No.

Q.

Okay. That's from your memory from an autopsy you did a year ago almost?

A.

Yes. Pretty much, yes.

Q.

Actually, over a year ago, correct?

A.

I believe so, yes.

Q.

Now, if I'm looking at a report that you'd written, how am I supposed to know that if it's not in there?

A.

Well, once again, I document what's significant. The significance of whether they're fractured or completely fractured is just not what I consider significant.

Q.

Okay. So this --

A.

So I do -- I'm able to remember in this particular case, but it's still not significant if I didn't, just like I would do microscopic sections of the ribs if I felt it was significant. I wouldn't have done them in this particular case, because it's just not going to help narrow things down and answer the questions that I feel are significant.

Q.

Okay. So when you did this autopsy with (b)(6) you had no idea why he was sitting there on that table at that point, correct?

A.

Basically, that's correct.

Q.

(b)(6)

A.

Q.

You, as a medical examiner, a pathologist, you have a

duty, because you often times are the only one looking at a body or an injury -- you have a duty to document that, because other people will rely on it, correct?

A. I have a duty to document what is significant, yes.

Q. (b)(6)

A.

Q. And you did not document anywhere on your four autopsy reports those (b)(6)

A. I don't recall four autopsy reports. I believe there were three.

Q. Okay. Bear with me here, Colonel (b)(6) You did one dated -- final autopsy report, date of report, 13 August.

A. Okay.

Q. Then there was final autopsy report addendum, also dated 13 August. There's final autopsy report addendum, 22 October '03. And then final autopsy report addendum 4 February of '04?

A. I believe there were just -- and I'm just speaking off the top of my head. I could be wrong. I made two addendums, one just to add the fact that we had a second forensic pathologist available at autopsy, and I believe the second addendum was to reflect the changes in the description or clarification of one of the sections. The fourth dating might have been the same one, and I just corrected the date when I reprinted it and signed it. But I'd have to look at them all to verify it.

Q. And you can't remember what the changes were, correct?

A. I remember -- I believe I remember what the changes were, but I'm not exactly sure of the dating of the reports.

Q. Now, the February 4th was after your Article 32 testimony in this case; is that correct?

A. Yes, I believe that was in January.

Q. And that's the one I talked to you about already where you changed it to reflect what happened at the Article 32 pretty much, correct?

A. Yes, basically, that was just the clarification.

Q. Okay. So that's a clarification of what you observed on June 10th, 2003, that you didn't document on that date, so you had to try to fix it how many months later, Doctor?

A. Well, no, that's really not what I term "clarification." My focus, when I was describing a section in there, was focused on a different -- on the internal part of the body, essentially of an organ. And what I described were the injuries in a separate section. So it was clear at the 32, because my focus was on this and I didn't clarify, that it made sense to clarify it afterwards because of the questions that came up with that. So it's not really a change; it's just a clarification of terms.

Q. Okay. So your autopsy report had one thing before the 32, you testified at the 32, and now your autopsy that's supposed to document what happened on June 10th, 2003, is changed again, correct?

A. It's clarified again.

Q. Okay. If you document things correctly on the front end, you don't have to worry about clarifying it later. Would you agree with that, Doctor?

A. If that was the issue here, yes. It's not necessarily documented incorrectly, but there was a better way to document it so it was more understandable.

Q. And that was because you used a lot of normal gauges in your first one where you didn't put in the facts as they related to the autopsy; is that correct?

A. I'm not quite sure what you're getting at.

Q. (b)(6)

A.

Q.

A. That's correct.

Q. But that wasn't correct, was it?

A. From my perspective when I wrote it, it was correct. But, clearly, that's subject to misinterpretation. And once I realized that other people would look at that as the entire organ, there's a better way to clarify that so that doesn't look like a contradiction.

Q. Okay. And at the Article 32, that's not what you said. You said you used the standard gauge and apologized that that was a mistake on your part.

A. No. It was an oversight that I did not give that the attention that I should have.

Q. All right. Doctor, tell me this, in your medical opinion, what's the difference between an oversight and a mistake?

A. Well, a mistake implies something is totally correct. An oversight to me is -- I guess, I'm not sure -- it is less significant in terms of that.

Q. Okay.

A. And I guess I look at it in terms of the significance of the two.

Q. But, again, your duty when you do an examination is -- and, oftentimes, you're the only doctor there. You're the one that everyone's going to rely on. And you can't go back and do another autopsy after you yank everything out, can you, Doctor?

A. Generally not.

Q. -- is to document what's there?

A. It's to document what's significant, yes.

Q. (b)(6)

A. (b)(6)

Q. (b)(6)

A. (b)(6)

Q. (b)(6)

A. (b)(6)

Q. (b)(6)

A. Yes.

Q. (b)(6)

A.

Q.

A.

Q.

A.

Q. Okay. So there's no pictures of that, of either side?

A. No.

Q. There's no microscopic examination, no dissection of any of those ribs?

A. That would not help in any way.

Q. (b)(6)

A.

Q. Which exam now?

A. The microscopic exam.

Q. And you said another exam?

A. The gross exam.

Q. Both are controversial?

A. Well, both are not specific and clear cut accurate. They are both subject to variabilities.

Q. Okay. Now, you indicated that some of your time frames for whether something is a recent injury or an old injury is a ballpark; is that correct?

A. That's correct.

Q. Now, ballpark means there's wide latitudes, correct?

A. That's correct.

Q. And you indicate this -- that you can tell whether something's 48 hours old or 72 hours old, correct?

A. In the ballpark, given the fact that there's going to be some standard deviation. You can't rule out old, or you can't rule out much less.

Q. So you're sitting there looking at an injury, and you don't know on (b)(6) whether that's 72 hours before or right before. Your testimony is only that it was before death; is that correct?

A. That's correct.

Q. And you don't know whether it's 72 hours?

A. I think it's more likely to be 24 to 48 hours, but I can't rule out 72 hours.

Q. Okay. And that's just your ballpark right there, 24 to 72 hours?

A. That's correct.

Q. Now, what would the difference be microscopically one day post injury? What would the difference be that you would see with your eyeballs as you're looking at a one-day-old injury, (b)(6)?

A. I'm sorry. What is the difference with what?

Q. What will you see -- okay. You've indicated that you can't rule out 72 hours. That means it could be 72 hours old, correct?

A. That's correct.

Q. All right. Let me ask it this way then, because I -- sometimes, I confuse myself, Doctor, and I apologize. I'm not very good at math either. So what's the difference between a 72-hour-old injury that you've eyeballed and you go, "You know, that looks like 72 hours," and a 96-hour injury?

A. I wouldn't eyeball it and say, "This is a 72-hour injury." I wouldn't say, "It's a 96-hour injury." I would say that it is in the range of 24, 48, can't rule out a 72. Generally, after 72, you'll start to see some gross changes. But I would not get pinned down with such a specific time frame.

Q. And that's because it's a ballpark?

A. Because it's a ballpark.

Q. And that's because there's no microscopic bone growth in this case to check and see what might actually be the physical process in regards to those ribs, correct?

A. When you're still at such an early age microscopically, you can see some early osteoblasts occurring. It can be about the same 24 to 48 hours.

Q. Okay. It can be about the same, correct?

A. Yeah. It's more helpful when you have fractures that are healing and much older.

Q. Okay. What's the difference between a 96-hour-old fracture and one that's 24 hours older than that?

MJ: Can you narrow your question, counsel? Do you mean microscopically or grossly?

CC: I'm -- thank you, sir.

Questions by the civilian counsel continued:

Q. Grossly.

A. Well, grossly, as I said, first, it's subject to variables depending on the healing process. At 72 hours, you may start to see some fibrinous change, some early scarring as it were. Whether it was 72 or 96, I wouldn't be able to tell you grossly.

Q. Okay. Thank you, Doctor. One problem that applies to this particular case is your autopsy was performed over a hundred hours post death, correct?

A. You mean the fact that it was decomposed?

Q. Correct.

A. Yes.

Q. And that can create significant problems in trying to determine really what you have. Is that a fair

statement, Doctor?

A. Yes. And it certainly makes a case like this much more difficult.

Q. And other factors play into that. In addition to just the time frame, you were dealing with a very hot period of time in Iraq; is that correct?

A. That's correct.

Q. You indicated on direct that it was in a refrigeration unit?

A. Yes.

Q. Where was the refrigeration unit?

A. You mean the remains were in a refrigeration unit?

Q. Correct.

A. It was right there -- it's in Tallil.

Q. What was the temperature in that refrigeration unit?

A. I don't know the temperature, but it was not -- I would call it -- well, it was suboptimal. It just -- it was not the best for that heat.

Q. You don't know what the temperature was -- isn't that fair to say, Doctor -- in that refrigeration unit?

A. No, I don't know. But it certainly was not as cold as would be required for that heat to preserve it.

Q. All right. Well, Doctor, this is what has me concerned: You're sitting there talking about the temperature in the refrigeration unit, and you say it's suboptimal --

A. That's correct.

Q. -- as if that's an opinion you have when you don't have a basis for that opinion, because you didn't see it. Is that correct, Doctor?

A. Well, I know you could -- you could put -- oh, I saw it. And I also saw them put beverages in there before they started putting the remains in there and you get very little refrigeration. We also put our specimens for toxicology in there until we actually left, and we got very little cooling on that. So, yes, this is very subjective. Generally, refrigerators that we have bodies in seem to be much more cooler than that, so I would call that optimal as opposed to suboptimal.

Q. Doctor, it's important when you go to do an autopsy that

you know as much as possible about, for instance, when someone died; is that correct?

A. That's correct.

Q. Do you recall what you put as a time of death for Mr. (b)(6)

A. NO, I really don't. I'm not sure if I even had one that was --

Q. Excuse me, Doctor. You did do the death certificate; did you not?

A. Yes, I did.

Q. And you're required, when you do a death certificate, to put down the time of death, correct?

A. That's correct, if we have one.

Q. All right. If you have one. You have hour, date, month, year, time of death, 6 June 2003, 1230.

A. Okay. I believe you, but --

Q. Okay. You believe me; is that correct?

A. Yes.

Q. Okay. Where did that time of death come from, Doctor?

A. That was -- what we use on our military death certificates are the time that they're pronounced. And from somewhere in one of the NCIS reports, I would have gotten that time.

Q. Okay. And you signed the death certificate on the day of your examination, correct?

A. I signed a handwritten one, I believe, because we were having problems with our digital equipment.

Q. Okay. It's also important to know where the body was and where it was stored previous to your autopsy. Wouldn't you say that's correct, Doctor?

A. That's absolutely correct.

Q. And that's critical, correct?

A. It's -- for a case like this, certainly, it's critical.

Q. Okay. You saw the body before the autopsy, and it was in a refrigeration unit at Tallil; is that correct?

A. That's correct.

Q. Where was it before that, Doctor, if you know?

- A. All I know is that at some point in time, it was at the Whitehorse Detainment Facility. And if I recall -- and I'm not sure -- it might have been a local hospital, if I'm not confusing cases. And this -- I would just have my report. I don't know for sure. And then, at some point, NCIS arranged to have it brought down to Tallil, and that's, basically, all I know.
- Q. Okay. Doctor, you raised an interesting point when you said "unless I'm confusing cases." You do quite a few autopsies, correct, Doctor?
- A. That's correct.
- Q. And you've got a recall ability on all 150 that you've done this past year?
- A. I have a fair recall on the aspects that I feel are significant but, certainly, not on all of them. Certainly, I do have to refer to my reports and photos.
- Q. And the time of death, you don't know for certain where you got that?
- A. No. I would have had to have seen something in writing to put that down.
- Q. But you don't know what you saw in writing.
- A. What I saw in writing, I would have -- that's what I would have used to put on the death certificate.
- Q. Okay. Do you know how long (b)(6) remained at Camp Whitehorse after the Marines there found him dead?
- A. No, I don't have those details.
- Q. Okay. Do you know whether his body was in a fetal position? Right side? Left side? On his stomach or on his back?
- MJ: I'm sorry. At what time, counselor?

Questions by the civilian counsel continued:

- Q. I'm sorry. At the time he was at Camp Whitehorse.
- A. That he was found. I was told he was somewhat on his side -- on his right side.
- Q. And that's something you were told; you didn't see that?
- A. I don't believe that's in the reports I had access to.
- Q. And if someone's on their right side or fetal position,

that can affect lividity and things of that nature, correct, Doctor?

A. Yes, it can.

Q. (b)(6)

A. Yes, I did.

Q. (b)(6)

A. Yes, I did.

Q. Insofar as any of the injuries you've described and talked to the members about and told us about today, you don't know how any one of those happened; is that correct, Doctor?

A. That's correct.

Q. What's artifact, Doctor?

A. In the case of what we've been talking, artifact is something that's created after the fact that's essentially not real, but it's created either by the procedures of the prosecution or by changes such as decomposition of the body, something that's what I would call not real.

Q. Okay. So that's like the skin slippage and all of that would be considered artifact?

A. Yes.

Q. And that can make autopsies difficult?

A. That's correct.

Q. And there was considerable artifact with this case, wasn't there?

A. That's correct.

Q. And I want to get to something you testified to on direct, and I want to make sure I understand, because this differs from your previous testimony. Your testimony now is on these (b)(6) you don't normally see that unless it's a compression injury, correct? (b)(6)

A. Normally, that would reflect some type of impact to the mid-chest.

Q. Okay. Now, what I mean by "compression injury" -- and you testified to this on direct -- like someone's on the floor, and they get hit; you have pressure on both sides

of the (b)(6) correct?

A. Yes.

Q. And a (b)(6) like we have here, you're not going to get that from a single kick to the chest, are you?

A. That is just much less likely. I can't rule out that it doesn't happen, and you could have a single kick on one chest and a single punch or something on the other side. But that's not what we normally see when we see this pattern of (b)(6) so I would say that would be much less likely.

Q. Okay, Doctor. I want to make sure I got this right. What I'm saying is a kick to the (b)(6) on one side is not going to (b)(6) on both sides, is it, Doctor?

A. No, not unless you had two separate blows.

Q. Okay. I'm going to stop you right there. The type of compression injury that normally causes a (b)(6) (b)(6) is one where there's pressure put to the ribcage from two sides, like CPR, correct?

A. Correct.

Q. Or someone falling on somebody as they go to the floor, correct?

A. If there's enough impact to the fall, yes.

Q. Okay. So, essentially, to get a (b)(6) you're not going to get it from a single kick or a single punch. It is not going to happen, right, Doctor?

A. If you're talking on both sides --

Q. Correct.

A. -- with just something single, no.

Q. Okay. And you don't know exactly how old either one -- either side -- left or right -- (b)(6) is, whether one is before the other, after the other, or anything else, correct, Doctor?

A. Not exactly. They appear to be in the same ballpark, but not exactly.

Q. It's difficult when you have a body that's as decomposed as (b)(6) to sometimes tell lividity from bruising, correct, especially in an autopsy 100 hours after someone's died?

A. That's correct.

Q. All right, Doctor. You've used the term "failure to appreciate," numerous times here in your testimony. And that means you didn't see it at autopsy, correct?
A. That's correct.

Q. So a failure to appreciate --
A. Or if I saw it, I felt that it was postmortem based on the -- cutting through it.

Q. Okay. But a failure to appreciate doesn't mean you don't like it, you fail to like it; it means you factually didn't see it, correct?
A. That's correct.

Q. Now, you've testified to what you won't say is a (b)(6) and you won't say what it is, in the general vicinity of the ribcage on an exhibit the trial counsel talked to you about, which is Prosecution Exhibit 13 --

Sir, can I put this on the --

MJ: You've got to move that yellow sheet.

Turn that light down.

CC: Thank you, sir.

Questions by the civilian counsel continued:

Q. (b)(6)

MJ: Excuse me.

Colonel, if you need to get up to move around so you can see it --

WIT: I think I can recognize that one from here.

Questions by the civilian counsel continued:

Q. Can you see that, Colonel?
A. Yeah.

Q. What you're referring to is this discoloration up right around that right nipple, correct?
A. That's correct.

Q.

(b)(6)

A.

Q.

A.

Q.

A.

Q.

Okay.

A.

Keeping in mind that nothing is absolute.

Q.

Yes or no, Colonel (b)(6)

A.

I think it's more likely to be a (b)(6)

Q.

Yes or no, Doctor, is that a (b)(6)

A.

It depends at what level of certainty you're asking me to say that.

Q.

Is that a (b)(6)

MJ:

She's answered the question, counsel. Move on.

CC:

Okay, sir.

Questions by the civilian counsel continued:

Q.

But you can't say to a reasonable degree of medical certainty that's a (b)(6)

MJ:

She's answered the question, counsel. Move on.

CC:

Okay, sir.

Questions by the civilian counsel continued:

Q.

You didn't appreciate that (b)(6) at the time of autopsy, correct?

A. That is correct.

Q. Meaning, you didn't see it on the autopsy table?

A. There was a great deal of discoloration in that area that I thought was postmortem.

Q. So you didn't see that (b)(6) or what you say is possibly a (b)(6) ?

A. I didn't appreciate it as (b)(6) I may have seen it, but I didn't feel it was a (b)(6) at the time.

Q. Okay. That's what you mean by fail to appreciate?

A. Yes. I may have seen it, but I did not think it was a (b)(6).

Q. Colonel (b)(6) you've testified as well regarding -- hopefully, I got that right -- Prosecution Exhibit 11, and you indicate -- you know, I should probably turn that around.

I'm sorry, sir.

Let's try this, Colonel (b)(6). There we go.

You'd indicated that it might be a pattern; it might not; you can't really tell what it is regarding knuckles or fingers in, roughly, this area; is that correct?

A. A little bit in that area and a little bit above. I believe that's what I said.

Q. Are you speaking in this area here, ma'am?

A. Just about that whole area, yes.

Q. Okay. You're not exactly certain that that's (b)(6) from a knuckle or anything else?

A. No.

Q. Okay. You're not certain to a reasonable degree of medical certainty that that's what that is?

A. No.

Q. And so when you fail to appreciate something, that means you failed to find it and you failed to document it at the autopsy, correct?

A. If I did not appreciate it, I would not have documented it.

Q. And the first time you saw anything that you thought

might be a (b)(6) in that upper right area was just before your testimony in the Article 32, correct?

A. When I was shown those photos for the first time, yes.

Q. And that was 27 January 2004, correct?

A. It was sometime in that area. I don't know the exact date.

Q. One thing that's important when you have a rib fracture --

Excuse me, sir.

We can turn the lights back up.

Thank you.

-- is to take measurements from the anterior midline or lateral axillary line; would you agree?

A. On certain kinds of cases.

Q. What's the anterior midline, Colonel (b)(6)?

A. It's the midportion of your torso from the front.

Q. And what's the lateral axillary line?

A. The lateral is in between the anterior line and the lateral line, which is to your side.

Q. And you didn't document the distance in regards to the (b)(6) in either one of those measurements, correct?

A. I'm not sure what -- you're talking about the (b)(6) (b)(6)

Q. Correct. I'm sorry. Yes, Colonel (b)(6), that's what I'm talking about.

A. I believe -- not measurements, no.

Q. Okay. Ma'am, you testified as well to what you believed to be (b)(6) right underneath -- or right around the umbilicus; is that correct?

A. That's correct.

Q. And that's in Prosecution Exhibit 11? Let me show you this, Doctor.

A. I don't know which number it is, but --

MJ: Turn it the other way.

CC: I'm sorry, sir.

MJ: Turn that light down again please.

Thank you.

Questions by the civilian counsel continued:

Q. (b)(6)

A.

Q.

A.

Q.

A.

Q. Now, when you do an autopsy you're going to do a "Y" incision; is that correct, ma'am?

A. That's correct.

Q. And that's an incision that essentially comes up from the pubis all the way up, correct?

A. Well, to about this level, and then you get the "Y".

Q. Okay. You come up right through the midline, right around the umbilicus -- belly button -- and you come straight up, and then the "Y" incision goes on either side of the ribs, correct?

A. No. Actually, it goes straight up to here.

CC: Okay.

MJ: By "here," you're talking about up towards your armpit?

WIT: Up towards my shoulders from about the mid, upper chest.

Questions by the civilian counsel continued:

Q. And so you would be cutting right through the middle of that particular (b)(6)

A. The one on the abdomen?

Q. Correct.

A. Yes.

Q. And you could have documented that with photographs, correct?

A. Yes, I could have. And I might have, but those may have been some of the photos that didn't come out.

CC: May I have just a moment, sir?

Thank you, Colonel. I have nothing further at this time.

MJ: Major Francis?

TC: Yes, sir. Thank you.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Ma'am, when you say in your autopsy report -- when you're (b)(6) and you use the word "anterior," what are you referring to?

A. The basic location on the chest from -- as it relates to the mid -- farther towards the lateral. So the anterior line is roughly here.

Q. Okay. So the anterior line is roughly around the nipple area on both sides of the chest?

A. Yeah. Sometimes we refer to that as the nipple line.

Q. And that's an easy reference for you in order to -- easy term for you to use in order to reference where an injury is, correct?

A. That's correct. Usually, for those, we use descriptive terms. For blunt force injury cases, I'm not aware of any pathologist that actually does measurements of those. You'll -- generally, we'll do that for stab wounds and gunshot wounds.

Q. Now, ma'am, when Mr. Tranberg was mentioning whether you

documented the (b)(6) that you examined on (b)(6) stomach, you did indicate that in your autopsy report, correct?

A. Yes, that's correct.

Q. So when he's referring to documented, he's talking about -- you were talking about incisions actually on the stomach and taking pictures of those, correct?

A. Well, yes. I mean, actually, the standard Y-shaped incision did go through that, but it was a very superficial (b)(6) just like we would document on extremities. And there was not enough significant underlying damage to call that anything else but a contusion, as opposed to when you do see that it's actually deeper, extending through the subcutaneous tissue into the muscle. Those have greater significance, so I document that.

Q. Yes, ma'am. Ma'am, is there a phenomena that exists in the body after a body -- after a person dies and lividity begins and the blood starts to draw away from, I guess, portions of the body where the body is laying, can that cause differences in, maybe, a coloration of tissue or the way, over time, you might be able to view tissue?

A. I'm sorry. Could you repeat that?

Q. What happens to muscles and tissue as the blood starts to draw away from it due to lividity?

A. Well, we have a process that's called fixed lividity. Usually, lividity starts setting in right away after death, depending on the environmental conditions, temperature and such. One to four hours, it will start becoming fixed. So if you take your finger and put pressure on the red portion, it will still all look red like the lividity. It's fixed. You can't push that away with your finger, as opposed to unfixed where when you push that away, it looks like the normal skin.

If an individual is lying on his side or his stomach for a period of less than four hours and lividity is not fixed, that will go away when you invert him on the back, and then it will all settle dependent. If it is fixed, though, you will see -- you'll see that.

Q. Ma'am, when you conducted your autopsy and after your -- what you observed -- you put in your autopsy report, are you just reporting what you see?

A. Basically, yes, I'm reporting what I see. Occasionally, if I feel it's significant, I'll report a significant negative. The majority of things I report, it's just a matter of what detail I go into, depending on the significance.

Q. Now, the addendums to the autopsy report, did any of those addendums refer to changing the types of injuries that you observed?

A. No, they did not. The first one was just to reflect the presence of a second forensic pathologist, which was an oversight on my part. And then the other one was just to clarify the terminology, which I consider an oversight. I should have realized that would be misinterpreted, because not everybody uses my perspective when I'm thinking in terms of describing an organ.

Q. (b)(6)

A.

Q.

A.

Q.

A.

Q.

A.

TC: Thank you, ma'am. That's all I have.

Thank you, sir.

MJ: Mr. Tranberg?

CC: Just briefly, sir. Thank you.

RECROSS-EXAMINATION

Questions by the civilian counsel:

Q. Colonel (b)(6) at the time that you're doing the autopsy on (b)(6) you don't particularly know what's going to be significant at that point. Is that a fair

statement, ma'am?

A. Yes. And I'm often surprised on a great many of my cases what things will come up after the fact.

Q. Ma'am, I have another question. Do you know what a sternum rub is?

A. Yes. I mean, there's a clinical term called a sternal rub.

Q. And a sternum rub is a procedure where you rub somebody right here to see --

A. -- to see their level of responsiveness.

MJ: Their what?

WIT: Their level of responsiveness. If we're thinking of the same thing.

Questions by the civilian counsel continued:

Q. Right. Do you know whether there was ever a sternum rub performed on (b)(6) ?

A. I don't know for sure, no.

CC: Nothing further. Thank you, Colonel (b)(6).

Thank you, Your Honor.

MJ: Anything else?

TC: No, sir.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. Colonel, you talked about taking some samples, and as I understood, because of the heat and the lack of refrigeration, they were destroyed?

A. That's correct.

Q. And it was never clear in my mind -- did you take a section of the rib cage, or do you recall?

A. I may have. That's normally what I do, but I take that section of the rib cage just to get a look at the bone marrow, if that's ever necessary. And that's kind of a habit we've gotten into.

In this case, it was just fraught with logistical difficulties. My assistant cut his finger during a procedure, and it created -- it was not a good thing to have happen, and we may not have ended up following all of our standard procedures.

Q. So as you sit here right now, you don't recall one way or the other whether you took that rib sample?

A. Yes. But I would not have taken it for the purposes of microscopic exam. I would have taken it for the purposes of examination -- well, it's also microscopic -- for the bone marrow. For those kinds of cases where we can never find a cause of death, sometimes we will do that, but not for the timing of the rib injuries.

Q. And why would you have not taken it for the timing of the (b)(6) in this case?

A. Because it wouldn't really give you any more information. You'd still be in a ballpark figure for the timing. And the changes are just too variable within the 24- to 48-hour period. So it really wouldn't help. And frankly, except for rare cases like with babies and you're looking for (b)(6) I don't know of any forensic pathologist that would do that --

Q. In this case?

A. -- in a case like this.

Q. (b)(6)

A.

Q. So in other words, to see this kind of injury, you would require force from both the front and the back at the same time or a blocking -- something blocking in the back or in the front with the force coming from the other direction?

A. I believe so, yes. I think just -- say, if someone was to remain standing and they received a blow and there was flexibility, that would absorb more of the impact. To have -- if we're talking about the rib fractures on both sides.

Q. Correct. That's what I'm talking about.

A. If they occurred with one blow.

Q. You also talked -- and you indicated to counsel that in your -- one of the addendums to your autopsy report, you were attempting to clarify some term or terms?

A. Yes.

Q. What terms were they?

A. Yes, just clarification and -- I have two sections in my report that describes internal appearances of organs, and I reserve a separate section for evidence of injuries. In this case, we're talking about, you know, the throat organs. I focus on the internal part of the throat organs, not on the outer part where there was injury. And not thinking, as an oversight, I called that normal, because it looked normal on the internal portion of it but not on the outer portion of it.

And it would have been better for me to be more clear and to say something like, "There's no nontraumatic abnormalities." That would have been a better choice for me, and in a sense, I look at that as an oversight that I didn't say that. But it still doesn't change anything, because I described the injuries in the evidence of injuries section.

Q. And that was done in the original report?

A. Yes. So there were no major changes made in terms of accounting for the injuries.

MJ: Okay. Questions in light of mine?

TC: No, sir.

MJ: Mr. Tranberg?

CC: No, sir.

MJ: Members?

Bailiff.

While we're finishing up with this, I'm going to ask the members to go ahead and step out of the courtroom.

The members withdrew from the courtroom.

MJ: The court will come to order. Be seated everyone. Let

the record reflect that all those present when the court recessed are again present. The members are absent. The witness is on the stand.

CC: Sir, we may need a 39(a).

MJ: We're in a 39(a).

CC: Right, sir.

MJ: Bailiff, go back out there and tell the members to be back here at 3:00. They can be in recess until 3:00.

The bailiff did as directed.

MJ: Bring those up here, counsel.

TC: Yes, sir.

The trial counsel did as directed.

MJ: Doctor, if you want to go ahead and step out of the courtroom, that's fine.

WIT: Okay. Fifteen minutes?

MJ: Yes, 15 minutes.

The witness did as directed.

MJ: We've got a whole series of questions, most of them which relate to the cause of death.

TC: Sir, if I may, I think we're running into the exact problem I anticipated this morning.

MJ: And what problem is that?

TC: It's the issue of because the members aren't hearing the facts about the dragging incident, so they're --

MJ: They've heard the facts about the dragging incident.

TC: Well, they haven't heard all the facts, because it's not the subject of this case. What's going to happen is they're going to link Roy to the broken hyoid bone and -- anyway, sir, that's all I want to say.

Sergeant, U.S. Marine Corps, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My present unit is CI HUMET Company, 2d Intelligence Battalion, located at Camp Lejeune, North Carolina. I did deploy in support of Operation Iraqi Freedom. I left in January of 2003. On 3 June 2003, I was in Nasiriyah, Iraq. After Task Force Charlie left, we had the Diquat providence which was the City of Nasiriyah and surrounding cities as well.

On 3 June 2003, I did participate in a patrol. We received information that there was an Iraqi man that had participated in the attacks on the 507th and still had a M-16. The 507th was Jessica Lynch's Army unit that was ambushed on the 23 March. The purpose of this mission was to recover a M-16 that was part of the 507th ambush and also to hopefully get the person who took the weapon. The information was brought to us by a source.

On the 3 June, myself, my linguist, and another Marine went down to the city of Suq ash Shuyukh. When we got there, we went to my source's house and waited for a platoon size element from Weapons Company, 2/25, to meet us there. I believe we were supposed to rendezvous at 1500 local. Once we got to this house, I went inside with my linguist. It was probably 1430. Once 2/25 arrived, we gave them a brief. The senior man from 2/25 was a staff sergeant, I believe. He came inside as well as one or two others, went over with everyone what was going to take place, and made sure everybody was on the same page, and then we departed. Right outside of Suq ash Shuyukh, the village has no specific name. It was out in the sticks, so to speak. Prior to leaving and heading out to the sticks, we gave the other members of 2/25 a brief on what was going on. I got everyone together and let them know that everything was still good and they would follow me in my vehicle with the source giving me directions on where to go. That was it. There were approximately 30 Marines in total there. We had six or seven vehicles.

When we left this first house, I was driving in my HMMWV. I was the lead vehicle. It took us approximately an hour to an hour and a half to get to the second house. We were driving for quite a while on pretty poor roads. Myself, my source, my linguist, and one other Marine on my team were in my vehicle.

Once we got to this second house, my source told me that he had

MJ: I guess I'm not following you, Major Francis.

What other facts do you think --

TC: Well, sir, I mean, like I said this morning --

MJ: Don't interrupt me. What other facts do you think are out there that haven't come out in terms of the dragging incident?

TC: Well, there's a lot of facts. sir. First of all, there's the way that (b)(6) was dragged, which there's a lot of variations on that. One is Major Paulus' statement where he says, in his statement, he saw him dragged by the throat. And when -- we didn't get into that with Agent (b)(6) during that case, but he described -- Major Paulus described it as like dragging a log, if you put your hands around a log, if you're going to back up with it and the thumbs being around the carotid arteries of (b)(6) that's one issue.

Another issue is the -- Lance Corporal (b)(6) did a demonstration during his NCIS statement to one of the NCIS agents. And when we did that demonstration, he -- the agent asked him, "Well, will you pick me up like you did (b)(6) " And so (b)(6) put his hands underneath, just like he did -- just like (b)(6) described and then had his hand up under his chin. And then he picked the agent up to about his knees. And when he did that, the pressure caused Agent -- the agent to choke from the right side. And the agent had to get his hands off of him -- get (b)(6) hands off of him. And the hyoid bone break's on the right side.

But what the members are doing right now -- this is what I'm speculating by their questions -- is, based on accomplice liability, they're looking at that, saying, Well, (b)(6) is his subordinate. He's choking him. He's had this pattern of abuse. (b)(6) reaches down, grabs him by the neck. What's the cause of death? She's going to say strangulation via hyoid bone.

MJ: Do you have a comment, Mr. Tranberg?

CC: Well, sir, obviously, our concern is -- and the court's limiting instruction is -- that the death of (b)(6) is not to be used against Sergeant Pittman. Because of

the nature of the injuries and the way the prosecution -- the government has elected to proceed on the case, it's impossible for -- of course, as we discussed, for the members not to know that (b)(6) is dead.

The government's theory is that (b)(6) died from a dragging incident. Our -- it doesn't really -- as far as the hyoid bone, the mechanism of death doesn't really affect Sergeant Pittman. So we think that it's not important they know that, other than that he is not to be held liable for that particular -- for the death of (b)(6).

MJ: I'm not sure I share your view, but -- the court's in recess.

The court-martial recessed at 1445, 26 August 2004.

The court-martial was called to order at 1501, 26 August 2004.

MJ: The court will come to order. The record will reflect that all those present when we recessed are again present. The members are absent.

Does either side have an objection to the questions concerning the cause of death?

TC: I don't have objections to any of the questions, sir.

MJ: Mr. Tranberg, do you have objection to any of the questions? You've indicated none, but --

CC: What's the appropriate limiting instruction, sir?

MJ: And what would you propose?

CC: Well, I know the court's given it already in regards to this situation. The manner of death was strangulation but the -- or cause of death was strangulation, but the manner of death is, I think, the prosecution's theory, which is the dragging incident. And I don't know if -- I have no objection if that's the way it comes out, sir.

MJ: That what comes out?

CC: I think if you're going to ask Dr. (b)(6) that, I'm pretty certain that's what she's going to say.

MJ: Going to say what?

CC: That it's strangulation, and that it was caused by dragging.

MJ: I don't know what she's going to say.

TC: I don't think she'll say it's dragging, sir. I mean, she could say it's consistent with dragging. How she testified at the 32 is that it's consistent with someone being grabbed around the neck and dragged or it is consistent with someone being grabbed around like Roy described. But she believes that it's 48 hours -- roughly, 48 hours -- at the time that (b)(6) did it, that that's too remote in time due to the freshness of the injury, in her opinion.

MJ: All right let's bring the Doctor back in.

TC: And, again, sir, that's -- I'm going off what happened at the 32.

MJ: Before you bring her back in, Sergeant, check to make sure we have all the members.

BAILIFF: We have them, sir.

MJ: We do?

BAILIFF: Yes, sir.

MJ: We're up. Okay. Well, bring her back in, and then let's bring the members in.

The bailiff did as directed.

MJ: The court will come to order. Be seated everyone. Let the record reflect all those present when the court recessed are again present. The members are present, and the witness, Dr. (b)(6) is still on the witness stand.

Questions by the military judge continued:

Q. Doctor, in performing your autopsy, did you have a duty to determine the cause of death?

A. Yes.

Q. And did you make a determination?

A. Yes, I did.

Q. And what was your determination as to the cause of death?

A. The cause of death, I called strangulation.

Q. And there's been some discussion about an injury to the -- (b)(6) neck. Can you discuss that in more detail for me?

A. (b)(6)

Q. So it was your opinion that the breaking of this hyoid bone is what caused the strangulation and him to die?

A. The breaking of the hyoid bone is a hallmark -- one of the hallmarks of strangulation. So it's the process of strangulation that breaks the hyoid bone. And depending on -- there are different mechanisms for this, and based on this certain scenario, which is a rare occurrence and not the normal way you -- or normal mechanism by which strangulation leads to death, it can result in swelling on the inside of the neck -- of the airway here, the larynx, that can actually be a kind of smothering, leading to asphyxia that way. And that's been described clinically even in patients that do okay for a few hours or longer, and then all of a sudden, they'll get into severe respiratory difficulty because of this swelling due to the hemorrhage.

Q. Can you define strangulation for me?

A. Strangulation is one of the processes that leads to asphyxia; asphyxia being lack of oxygen getting to the brain. Strangulation is a type of one of these fatal asphyxias where there is pressure on the neck, either with hands, with a ligature, or sometimes with, like, an elbow like in a choke hold, that can cause various physiological mechanisms that ultimately lead to death.

Some of them being blockage of the major blood vessels that go to the brain and actually constrict that, so the brain is not getting oxygen that way. It can be due to compression of the actual airway that interferes with the flow of air getting to the brain. And it's one of the forms of asphyxia.

Q. There's been some indication or testimony that some hours before (b)(6) death, that he was dragged from the room, essentially, by grabbing him by the neck just below the chin and behind the head. Could that type of -- and dragging him, maybe, some 40 feet. Could that type of activity lead to the injury that you observed and to the death of (b)(6)?

A. Yes, it could.

Q. Similarly, there's been testimony that at one point -- I believe it was, approximately, 48 hours before his death that he was grabbed by the throat in the area of what I would refer to as the Adam's apple, using a single hand and -- like this. Is that the type of grip that could cause the type of injury you observed that led to his death?

A. That's really dependent on the force of the grip and how long, basically, it lasts and at -- what points were being gripped. And I just -- it depends on that. I have no way of knowing what type of grip that was.

Q. If someone grabbed (b)(6) by the throat with their hand, is it possible to -- understanding you don't know exactly how he was grabbed -- but is it possible to break that bone in that manner and cause the death?

A. In a gentleman of what we think Mr. Hatab's age is where the hyoid bone becomes more brittle and calcified, if it was a very strong pressure over that area of the hyoid bone, yes. Although -- it could happen that way, although I would probably favor the dragging as more potentially possible to cause this, but I certainly couldn't rule out a single grip.

Q. Were you able to make any determination during your autopsy as to how long before his death the injury to his hyoid bone had occurred?

A. Once again, we're back to the -- grossly, it was a recent hemorrhage. That would be the kind of thing that -- we're back to 24, 48 hours, but it looked fresh to me. That would be the type of thing I would want to have a microscopic section, but that was one of the

tissues that was destroyed with the decomposition, essentially, in transport. So I can't pin that down. It's still a ballpark figure.

Q. If the hyoid bone was broken through this strangulation, were you able to make a determination as to how long after the hyoid bone was broken it would take before the individual died?

A. That's variable. Most of what I've seen in the clinical literature, people who seem okay without any major symptoms will -- all of a sudden, 6 to 8 to 12 hours or longer will present to the ER in severe respiratory difficulty and if they hadn't received the surgical intervention, probably would have died.

Q. And about how long after the injury would death occur?
A. I'm sorry. That's giving the scenario that he was alive and conscious. Now, if for the -- what we normally see with strangulation, death is usually anywhere from one to four to six minutes, or at least when you get irreversible brain damage, and those -- generally, they would be unconscious.

Q. If they weren't unconscious. If they were conscious?
A. Then it -- death could -- the numbers I have seen is generally 6 to 8 to 12 hours on those case reports of patients that have presented with that.

Q. Twenty-four hours?

A. Essentially, that could be. I've seen, in the literature, days, but I -- it's implied in the literature -- and it's not very clear -- that's due to a different process of brain damage from the lack of oxygen that causes a process in the brain. But in this case, 6 to 12 to 24 hours. I haven't seen anything longer than 24 hours in the literature of this mechanism.

Q. Do you have an opinion as to how old (b)(6) was based on your medical examination?

A. He could have been anywhere from 40's to 50's, basically, but I really couldn't say for sure, basically, because of the decomposition. Certainly, the calcification of his bones and, particularly, the hyoid bone, he looks like -- it looked like what we'd see with somebody that's older than 25, you know, to 30. The reported age I think we got was early 50's, and that would have been consistent with what I saw. But the

decomposition made it difficult.

Q. You noted a number of injuries. You talked about the (b)(6) Aside from those injuries that you observed, were you able to make any assessment of his general overall health?

A. Yes. I saw no evidence of any natural disease, keeping in mind that he was decomposed. But the types of things that would be serious or significant, I saw no evidence of natural disease.

Q. Did you -- and I believe you indicated you understood he had had fairly severe diarrhea before death?

A. Yes, I did.

Q. Did you --

A. I heard -- well, I'm sorry. I heard that he had two or three bouts of diarrhea.

Q. Had you made any determination as to the cause of that?

A. I excluded some of the causes such as infectious disease, the types of things that would lead to prolonged, severe diarrhea that could get you into trouble with dehydration and electrolyte abnormalities that could be a problem, lead to death. I was able to see fecal specimens and examine his colon, and there was no evidence of any significant bacteriologic disease that could do that. People having some respiratory difficulty, having a lot of pain, can have diarrhea like that just based on the stress. But I saw no evidence of anything specific.

Q. You talked about the stress if -- an individual with (b)(6) that would be a painful injury?

A. That would be extremely painful.

Q. Would that cause you difficulty breathing?

A. Yes, it could, mainly because it is so painful. I did consult with some clinical colleagues and trauma experts at Landstuhl, and what they'll often do with these kinds of injuries, although they're not fatal in themselves, they'll actually place them on respirators to assist their breathing. Because it's just so painful to move in and out. It's painful to swallow. It's painful to talk. Anything that makes the chest move is painful. So, in essence, that's what I would refer to as a stressful situation, aside from, perhaps, other things that were going on.

Q. Could that have contributed to the diarrhea?
A. It could have.

Q. (b)(6)

A.

Q.

A.

Q. Would 72 hours be on the outside limit of the age of all the injuries that you observed?

A. Given the fact that they're subject to variabilities in the healing process, yeah, generally, at 72 hours, I would expect to be seeing something different than I did.

Q. And all of the injuries that you observed were antemortem?

A. Yes.

Q. I'm sorry. All the injuries that have been described?
A. That I've described.

Q. (b)(6)

A.

Q.

A.

(b)(6)

Q.

A.

Q.

Would you --

A.

I can't rule it out. Let's put it that way.

Q.

If an individual received a kick like that, would you expect to see other evidence of the kick besides the

(b)(6)

A.

Q.

If (b)(6) prior to being
struck by the neck and having his hyoid bone broken, what
impact would the (b)(6) have on hastening or
delaying his death?

A.

They may have contributed to the respiratory compromise,
the difficulty breathing. And, yes, they could have
hastened to that. To what degree, we can't say. That's
another question I also consulted our trauma experts at
Landstuhl, where we receive quite a few trauma patients
from down range. It could have been a contributing
factor, yes. I just can't say to what degree.

Q.

Talking about the (b)(6) there's
bleeding inside the tissue, correct?

A.

Yes, in varying degrees.

Q. Was the (b)(6) that you observed sufficient enough to, say, cause (b)(6) to go into some type of shock?
A. That was a question that was considered. And I have had cases with similar looking bruises. And if the impact and the damage to the underlying muscle is great enough, that can lead to a process we call rabdomyalysis, that causes all kinds of metabolic difficulties, and people can die from that.

But usually, you need to see a great deal of necrosis or actual damage of the muscle. In this case, and on all of the incisions I performed, I saw hemorrhage around the surface of the muscle but no actual necrosis that could have led to a metabolic disturbance that would have gone into shock and could have ultimately killed him. So that certainly was a consideration.

MJ: Colonel Shelton, I'm not going to ask your second question. I don't believe that she has a basis to answer that.

Have I answered all the members' questions? Are there other questions? Appears not.

Major Francis, questions?

TC: No further questions.

MJ: Mr. Tranberg?

CC: No, sir.

MJ: Warning or recall?

TC: No, sir.

CC: No, sir.

During an 802 conference, the trial counsel stated the next witness' name could not be put on the record due to his position and job.

spotted (b)(6) So we stopped. 2/25 got out and provided security. (b)(6) started running towards the tree line. (b)(6) was the one we were told that had the M-16. That's when we got out.

2/25 set up the perimeter. Myself, my linguist, and my source went and got (b)(6) I didn't see him at first. My source said he was outside and took off through a marshy area running just a little bit towards the tree line. I told him to stop. He did. He turned around and walked back to us. He didn't run very far at all, 20 meters, 30 meters. He came directly back to me. At that point his physical condition seemed all right. I don't really remember if he was out of breath. When I first saw him, (b)(6) was acting a little calm. He was cooperating. He wasn't struggling with me at all. I didn't recall seeing any injuries on his face. He didn't appear to be in any type of pain at all.

Once (b)(6) came to me, I asked him if he had any weapons on him. He said no. He was wearing a long rope. I asked him to raise it up. He had no weapons on him. I asked him if he had the rifle. He said that he had given it to his brother. We found out where his brother was, which was right there in that area, and went to speak with his brother.

I was speaking English and my linguist was translating. He was speaking back to the linguist. He didn't have any problems speaking. He hadn't been flex cuffed yet.

We then walked towards the village. He pointed out his brother. His brother came up and spoke to us. He told us that there were two younger gentlemen that had wanted to buy the rifle. They hadn't paid yet, but he had given them the rifle. I asked him if he would lead us to them. He did. We left (b)(6) there with the Marines from 2/25.

Along with a few Marines from 2/25, my source and my linguist walked down a small path towards the river with (b)(6) brother. His brother called out. The two guys answered. He told them to get the rifle. It was in a creek. The creek was probably five or six feet wide, couple feet deep. One of them got in the water, fished around a little bit for the weapon, and brought it out. It was a M-16A2, "507" was stencilled on the butt stock, and it was kept in a pair of pants.

At this point, we started walking back with the other two individuals. (b)(6) had been flex cuffed by the time we got back, and the two brothers were flex cuffed. (b)(6) was put in my vehicle. The other two were put in two other vehicles. When I came back, I saw (b)(6) He was just standing there. He

didn't have a sandbag or a box on his head. His physical appearance was the same.

We returned back to (b)(6) house. He had a place inside the City of Nasiriyah, but he was staying out in the sticks. There were other Iraqis around. There was a small village, probably ten houses or so. Marines from 2/25 had already cleared all the houses, put all the women and children together in one house and all the men were separated as well. We put (b)(6) into my vehicle and the other two were put in the other ones. It was starting to get dark, and we had quite a ways to go. So we headed out.

(b)(6) was sitting on the bench in the back of the HMMWV on the passenger side. I was still driving. I didn't really observe (b)(6) in any way. I didn't hear him speak at all.

We went back to my source's house in (b)(6). It was already dark by then. 2/25 had set up a retrans station between (b)(6) and Nasiriyah. We still weren't getting comm with my team because we're out in ones and two's. We're usually back by dark. I asked the Marines from 2/25 if they could take (b)(6) and the two brothers to Camp Whitehorse because I needed to get back and report to my boss. At this stop, I told the Marines that they did a real good job and conveyed that to their battalion commander and that was it. They knew that we got the rifle and that we got (b)(6) as well.

We were staying at the museum inside of Nasiriyah. I went back and briefed my boss on what happened and that was it for the night. (b)(6) was brought to Camp Whitehorse.

At no point during this entire patrol did I ever observe (b)(6) being punched. I didn't see him get hit or kicked. I didn't see him appear to be in pain. He wasn't having any problems breathing.

My three-man group that I was working with is called a HET team, human exploitation team. The main purpose of a HET is to provide force protection.

For all the prisoners or detainees that were brought to Camp Whitehorse, it was our responsibility to do an interview with them and initial screening to ascertain if they needed to be detained further or if it was just bad circumstances for taking them into custody. The interview wasn't done that night because it was our SOP not be out after dark. He was not an eminent threat to the force protection of 2/25 or anyone else in Nasiriyah. So when I

got back, my boss told me that I could just go the next morning, which I did do at approximately 0900 on the 4th of June.

We were in the interview room. One guard escorted (b)(6) into the interview room. His condition was about the same at this point. It was very hot. He was sweating already. All of us were. He was flex cuffed. We had him sit down on the floor. After the beginning portion where I got his name, made sure he'd been seen by medical personnel, I asked him specific questions on what happened on 23 March during the attack on the 507th and if he had, in fact, taken part in that. I was able to confirm those facts. The interview lasted approximately an hour and a half. (b)(6) was sitting the entire time. A few times he slouched down further. We'd help him sit back up, but besides just being hot in there, everything was fine. He was speaking to me. He wasn't having any problems speaking. He didn't appear to be having any problems breathing. He never said anything about pain.

During this 90-minute interview, he was offered water. He didn't want to take it from me. He wanted to get it from my linguist. I gave him some drinks of water.

After the interview concluded, we helped him stand up. The guard had been waiting outside the entire time. The guard escorted him back. While this was going on, I wasn't yelling at him in any way. He was answering direct questions.

Being a HET member, the types of techniques we use in the interviews is dependent on different types of questioning and depending on how the detainee is acting. There never is a physical technique that we use. I have heard of the 50/10 technique. The first time I heard about it was after (b)(6) had died. I was flown to Kuwait to be interviewed by a NCIS member. 50/10 is when you have a subject stand up for 50 minutes and then sit down for 10. I have no idea what the purpose is of this technique, but I guess it's used to make the person uncomfortable. As a member of HET, I have never used this technique. I don't have any idea why it would be used. I do not know if the Marines at Camp Whitehorse were using this technique. At no point did I ever tell them to use this technique.

We talked a little bit about sleep deprivation techniques. Regardless of the 50/10, I never asked or told the Marines at Camp Whitehorse to use the 50/10 technique. I never told them to use any type of sleep deprivation technique.

CROSS-EXAMINATION

Questions by the defense:

The interview of (b)(6) on 4 June started approximately nine in the morning and lasted for a little over an hour. During the course of that interview, I was seated in relatively close proximity to (b)(6). The building in which I conducted this interview was a converted head. It was actually a building that was preexisting. This room where the interview was conducted was relatively small.

I had an unimpeded view of (b)(6) for the duration of the interview. I was able to see him the whole time. That's important for me as a member of the human intelligence exploitation team to be able to maintain that eyes on of the person I'm interviewing. One of the things we're trained in as a member of the HET is observing and then potentially exploiting those observations of the person I'm interviewing. During the course of my interview with (b)(6), I was paying close attention to him to see if there was something I could observe that would allow me to gather more intelligence.

Throughout the course of that interview, I didn't notice any kind of physical problems with (b)(6) that caused me any concern. When he was asked if he had been seen by a medical person, he responded that he had. Throughout the course of this interview, nothing led me to believe that there was something wrong with him that required additional attention. That's actually another technique I can use as a HET member to try and gain a rapport with the person I'm interviewing is to give them medical attention, give them something.

This converted head that we were conducting the interview in had a hard floor on it. (b)(6) was seated on the floor for the duration of this interview. He was seated with some type of restraining devices on his hands. So he would have needed assistance standing and sitting. He was flex cuffed behind his back and remained flex cuffed with his hands behind his back and seated for the duration of the interview. His back was resting up against some kind of divider between the shower stalls. He consumed some amount of water during the interview which was provided by my linguist. My linguist was somebody who's fluent in Arabic.

There wasn't any kind of picture or other documentation of this interview with (b)(6) that was taken by the HET. The initial screen was a report. Sometimes that includes a photo of the

person that's being interviewed. I don't believe I took a photo of (b)(6).

There was no need for any yelling with (b)(6). It's not uncommon in some circumstances to utilize voice modulation, yelling, things of that nature to gain compliance or intelligence from the suspect.

REDIRECT EXAMINATION

Questions by the prosecution:

I never observed any part of my team tell the 2/25 Marines to deploy sleep deprivation techniques. A "CIR" is a counter-intelligence report. The purpose of a CIR is to distribute information you've gotten. A photo can be included with that. A CIR isn't necessarily on an individual. It can be any subject matter. It's just a means of distributing information. It is part of our SOP to normally take pictures. The only thing we wrote up on him was the initial screening report.

EXAMINATION BY THE COURT

Questions by the military judge:

When (b)(6) was sitting on the floor, he wasn't hooded. I don't believe he had a hood on when he came in. I can't tell you for sure. I don't recall if one was placed back on him when he left.

Questions by the members as posed by the military judge:

I do not remember which guard brought (b)(6) to the building when I interrogated him. I never informed anybody at Camp Whitehorse that (b)(6) had participated in the ambush of the 507th. Members of the HET are not authorized to use physical force or sleep deprivation techniques to obtain information. Other than questioning, there aren't any other techniques that we're allowed to use. We are not allowed to deprive subjects of things like food or water or clothing or anything like that. We aren't allowed to threaten to deprive them of those things.

I worked with the members of 2/25 for approximately three months. The incident with (b)(6) was the only time we went out and detained anyone. I worked with 2/25 a few times at night when we received fire. The commander wanted a patrol to go out. He wanted HET support as well as linguist support. So I would go out

on foot patrols with them as well. 2/25 was the only Marine unit in the Diquat Province. So different companies were sent in different parts of the city and outside the city. We were set with Weapons Company at the museum. I worked mostly with Weapons Company.

I had quite a bit of interaction with the people guarding the detainees at Whitehorse because we were out there quite a bit. We'd go out and be briefed on how many came in, what were the circumstances, how they'd been acting so far. The guards would bring the prisoners out to the interview room. We would talk to them as well to see how the prisoners acted. I don't believe I talked to anybody about (b)(6) when he was brought out. We were quite friendly with all the guard force. From what I saw, they were always very professional and always did a good job. I did talk to them about what they were doing with the detainees between when they were detained and when I'd interview them. The guards indicated that the prisoners were searched, that they were seen by a corpsman, if they had any food or water up to that point to when we got there, and what they had. Rest never came up. Anything that they could tell us was useful just so we had as much information as possible. If an individual had stayed up all night and was fatigued, that would be something that we'd want to know. I didn't ask them if a prisoner had been kept up all night. I never asked them if they got a good night's sleep. I never asked a detainee that either. I did ask the detainees how they were being treated. They obviously didn't like where they were at, but I never heard one complain about any type of abuse at all.

Normally, six people compose a HET. A HET supports mostly a infantry unit, but escorts to a MEU. It can be any Marine ground team. A six-man team can serve a battalion. Our team was the only team in the area of 2/25 during this three-month period.

I was there before 2/25 was in place. Then they joined me there. We left at the same time. We turned over with the foreign country military. They took Diquat Province.

I do know a Lance Corporal (b)(6). My relationship with him is the same with the other guards, just having discussed things about new prisoners and just normal pleasantries.

I know Sergeant Pittman. My relationship with him is the same. Right before we left, we went in their quarters one time and there was quite a few of them that had American flags and they wanted us to sign them. There could have been another time that we went in there, but that's the only time I recall. I never sat down and ate my meal with them. I would characterize my relationship with

them as professional, but friendly at the same time.

While I was there with 2/25, I never heard of any of the guards striking any prisoners at the detention facility. I never had any of the people I was interviewing request medical treatment for injuries they received at Camp Whitehorse. I always asked them if they'd been seen by a corpsman or a doctor and they always indicated they had. There were some of them that had injuries. In response to my questions, they were receiving appropriate care.

(b)(6) a civilian, was called as a witness by the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name.

A. (b)(6)

Q. Spell the last name, please.

A. (b)(6)

Q. Where do you currently reside?

A. (b)(6) sir.

Q. Are you currently a Lance Corporal in the United States Marine Corps Reserve?

A. No, sir. I'm in the IRR.

Q. The highest rank you received was Lance Corporal. Correct?

A. Yes, sir.

Q. And your unit before you went into the IRR was 2/25. Correct?

A. Yes, sir.

Q. What's your current occupation?

A. (b)(6)

Q. For the (b)(6)

A. Yes, sir.

Q. You deployed in support of Operation Iraqi Freedom. Correct?

A. Yes, sir.

Q. During that period of time, you were assigned as a linguist to a HET team?

A. Yes, sir.

MJ: Lance Corporal (b)(6) you need to keep you voice way up. Besides me and trial counsel, I don't think anyone else can hear you.

ACC: Yes, sir.

Questions by the prosecution continued:

Q. The HET team consisted of you, a staff sergeant, and a sergeant. Correct?

A. Correct.

Q. First of all, I want to direct you attention to the events of 3 June 2003, all right. On that day, did your HET team get involved with type of capture?

A. Yes, we did.

Q. Please describe what you were involved with.

MJ: You're still not speaking up. You are talking real soft.

THE WITNESS: The capture of the person that died, (b)(6). He was involved in the 507th Maintenance Ambush. We were involved in that.

Questions by the prosecution continue:

Q. What was your involvement?

A. We gathered intel. We went out there to the location to capture him and to bring him back for information?

Q. What location is that that you went to capture him?

A. It was an area in Iraq called Suq ash Shuyukh.

Q. Do you know how that's spelled?

A. I am not sure.

Q. Okay. You are saying (b)(6) but what kind of place did you go to to capture (b)(6)

A. It was a wooded area, tree line. It was maybe like seven clicks away from Suq ash Shuyukh.

Q. Did you go to a building?

A. Yes. It was a House.

Q. What did you do when you got to the house?

A. As soon as we got there, we seen a man running. We figured it was him. So we took off after him. That's when we told him to stop, and he stopped. And he walked back towards us.

Q. How far did he run?

A. I would say maybe like 25 yards ahead.

Q. Did it seem like he was having any problems running?

A. No.

Q. You said you told him to stop?

A. Um-hum.

Q. Who was with you at that time?

A. The HET team members of 2/25.

Q. You and the other HET team members?

A. Yes.

Q. Did you need any physical force to restrain (b)(6)

A. No.

Q. Was (b)(6) cooperating?

A. He was cooperating.

Q. At the time of capture did anybody punch him, kick him or --

A. No.

Q. Any physical force whatsoever with him at that time?

A. No.

Q. After he came back to you, what happened next?

A. I checked him for weapons. We cuffed him, zip tied him, and put him in the back of the HMMWV. And he led us to where one of the M-16s from the 507th was.

Q. From the time you got him into the HMMWV until where he took you to where the weapon was, did you see nobody kicked him?

A. No. He was with me, (b)(6) and (b)(6) in our vehicle. So nobody --

Q. Did you see anybody kick him?

A. No.

Q. Punch him?

A. No.

Q. Choke him?

A. Nope.

Q. Use any type of physical force with him in any way?

A. No.

Q. Was he being cooperative?

A. He was being cooperative.

Q. So you go to where the weapon is. What happens next?

A. So He leads us to the house. And we retrieved the weapon from two other Iraqis that he sold the weapon to. So we got the weapon. We took the other two Iraqis along with (b)(6) and we had them transported with 2/25 to Whitehorse.

Q. There was a patrol from 2/25 that accompanied you for this capture. Correct?

A. Yes.

Q. When you got done at the second house, you gave (b)(6) over to the 2/25 patrol. Is that what you are saying?

A. Yes.

Q. Again, at that time, did you see anybody kick, hit, or punch (b)(6)?

A. No.

Q. I want to show you a photograph. It is Prosecution Exhibit 7. Do you recognize the person in that photograph?

A. Yes.

Q. Who is that?

A. (b)(6) the person we captured.

Q. Okay. Is that a fair and accurate depiction of how he looked the last time you saw him?

A. No.

Q. How is it different?

A. (b)(6)

MJ: You need to speak up. I can't hear you.

THE WITNESS: (b)(6)

Questions by the prosecution continue:

Q. On his face?

A. On his face.

Q. At any time that you had worked with this HET team, did you ever observe a member of your team ask a guard from Camp Whitehorse to use a sleep deprivation technique?

A. No. But like if they weren't cooperating -- like, of course, we'll tell them to stand there or whatever, if they weren't cooperating, but not like intentionally, no.

Q. What do you mean by "if they weren't cooperate"?

A. Like some prisoners wouldn't cooperate, and they'd act up. So we'd leave them in the corner. We'll say stand up or, you know -- it's not like sleep deprivation, like we're trying to purposefully, you know --

Q. Why do you make them stand in the corner?

A. Well, if they acted up -- like if they acted up, you know, if they weren't compliant. So we would just tell them, you know --

Q. Who are you telling?

A. The prisoner.

Q. I am asking did you ask the guards to ever do anything?

A. I personally didn't ask any guards to do that.

Q. I am not saying if you did personally. Did you hear any of the others do that?

A. I didn't hear them say it personally, no.

Q. How long did you work with this HET team?

A. This one? From, I believe, toward the end of April -- the middle of April to August, the beginning of August or like the end of July.

Q. During that period of time, were there a lot of prisoners that you interviewed at Camp Whitehorse?

A. Yes.

Q. What time of the day would you typically conduct these

interviews?

A. Different times of the day. It could be morning. It could be night.

Q. So you didn't have a problem interviewing people at night?

A. No. If there was captures at night -- like let's say we did a raid at night and we would bring them there and do it at night, the same day we captured them. Sometimes we'd wait a day, depending on whenever they wanted to do the interview.

Q. So the fact that it's day or night doesn't affect whether you can interview them at Camp Whitehorse. Right?

A. No. I have done interviews at night or in the day. But mostly it's the day.

Q. Were you involved in an interview of (b)(6)?

A. Yes.

Q. When was that?

A. The following day in the morning. The following day of the capture.

Q. Okay. Well what time of the day on the 3rd did you capture (b)(6)?

A. It was getting close to evening, about around six. It was getting dark I remember when we captured him.

Q. Why didn't you interview (b)(6) at that time when you captured him?

A. Well, they wanted to bring the weapon back, the members of the HET team that I was working. They had to write reports of what happened. So I guess it was up to them. They used their discretion not to go that same night.

MJ: Speak up please.

THE WITNESS: They used their discretion not to go and interview him that night.

Questions by the prosecution continued:

Q. Well, was it your understanding that (b)(6) was a source of intelligence?

A. Yes.

Q. Isn't one of things that -- something that you learn with working with HET that is an important aspect of getting intelligence is the shock of capture. Right?

A. Yes, in a way.

Q. So isn't the most important time to interview someone, if you are going to do it, is right after the capture. Correct?

DC: Objection. Leading, facts not in evidence.

MJ: I don't know about the second part. But the first part is sustained.

Questions by the prosecution continued:

Q. In your opinion, when is shock of capture the greatest?

DC: Objection. Lack of foundation.

MJ: Sustained.

Questions by the prosecution defense continued:

Q. What is the shock of capture?

A. Well, the person is confused at the time, scared, he would give information -- I mean, at that time, that's when he's most likely to -- I guess we didn't want to do it because of everything that was going on. I do what they tell me. So it wasn't -- I didn't question it.

TC: That's all I have. Thank you.

MJ: Defense?

DC: Yes, sir. Prior to cross, can we take a brief recess for health and comfort reasons?

MJ: All right. Let's make it about five minutes. The court's in recess.

The court-martial recessed at 1626, 26 August 2004.

The court-martial was called to order at 1634, 26 August 2004.

MJ: The court will come to order. Be seated everyone. The record will reflect that all those present when the court recessed are again present. The members are

present. The witness Lance Corporal (b)(6) is on the stand.

Captain Folk.

CROSS-EXAMINATION

Questions by the defense:

Q. Your background is not that of an intelligence Marine. Correct?

A. No.

Q. You are actually an 0311 by trade?

A. Yes.

Q. And your existence on a HET team -- or your affiliation with the HET team was based on your language skills?

A. Correct.

Q. But those were language skilling developed essentially just from growing up. Right?

A. Yes.

Q. And you never worked with the HET team prior to arriving in Iraq in support of Operation Iraqi Freedom?

A. No.

Q. The HET team you were attached to worked out of Camp Whitehorse relatively frequently. Right?

A. Yes.

Q. Your time with the HET team was -- while you were in Iraq, you were full time with the HET team. Right?

A. Yes.

Q. You weren't working as an 0311?

A. No. Just the first month that I got to Iraq.

Q. All right. During that time with the HET team, you were utilized not so much as an interrogator but as an interpreter?

A. Yes.

Q. Your skills as an interpreter were relied upon by the rest of the members of your HET team for the conduct of the interviews and interaction with people that you were interviewing?

A. Yes.

Q. And it was that skill, your interviewings, which is what led you to be part of the interview with (b)(6) Right?

A. Yes.

Q. That interview with (b)(6) was conducted -- or was run, I should say, by a sergeant. Right?

A. Yes.

Q. And there was a staff sergeant present, but it was a sergeant who was actually the individual running that interrogation or that interview?

A. Yes.

Q. The interview with (b)(6) at Camp Whitehorse took about what, about an hour or hour and a half?

A. Around about. Either an hour or an hour and a half.

Q. And it took place in this little converted head facility that was located on the detention facility grounds. Right?

A. Correct.

Q. And during that interview, your job was to take all of the questions that the HET team members wanted to have (b)(6) answer and take them from English and turn them to Arabic and ask them to (b)(6) Right?

A. Yes.

Q. And then translate his answers?

A. Yes.

Q. You had no problem translating?

A. No.

Q. You understood (b)(6) answers?

A. Yes.

Q. He understand your questions?

A. Yes.

Q. One of the first things that you asked (b)(6) during the time of that interview was whether or not he had seen a corpsman or received medical attention. Right?

A. Yes.

Q. And in response to that question, he said he had.
Right?

A. Yes.

Q. That he didn't have any medical problems?

A. No.

Q. And throughout the course of the interview where you saw him in this converted head, he was on the floor with his hands flex cuffed. Right?

A. Yes.

Q. And he remained on the floor for the duration of the interview?

A. Yes.

Q. During the interview, besides asking questions and getting this information from him, you actually also provided him with some water. Right?

A. Yes.

Q. And this happened on a couple of occasions during the course of that interview?

A. Yes, a couple times.

Q. And he actually would drink water from you, but he actually wouldn't take it when it was given to him by the sergeant. Right?

A. Yes.

Q. He was somewhat selective in who he would deal with in that regard?

A. Yes.

Q. Would you agree with me his attitude was one of a pretty arrogant guy?

A. Yes.

Q. And as the interview went on, he became a little bit less arrogant and a little bit more cooperative?

A. Yes.

Q. Throughout the course of your time translating these questions from the HET team to (b)(6) and translating his answers to the HET team, you were able to observe his physical appearance?

A. Yes.

Q. You were able to observe his facial expressions, his features?
A. Yes.

Q. The tone of voice that he used?
A. Yes.

Q. His ability to comprehend what was going on, his eyes, and everything like that?
A. Yes.

Q. He never appeared to be in any kind of pain. Right?
A. No.

Q. Let me re-ask that. Did he ever appear to be in any kind of pain to you?
A. No pain, just fatigue.

Q. Okay. When you say fatigue, do you mean he looked kind of tired?
A. Yes.

Q. Maybe hadn't been sleeping the night before?
A. Yes.

Q. That wasn't particularly surprising to you though. Right?
A. No.

Q. And the reason it wasn't surprising to you is because it wasn't uncommon to have detainees kept up the night before the interview?
A. I don't work at the EPW camp, so --

Q. Well, had you had detainees kept up all night prior to receiving an interview from the HET team when you participated?
A. Have I had?

Q. Have you noticed other detainees who were tired because they had been kept up the night before --

MJ: You're asking him two different questions, counsel. Ask him one and then the other.

Questions by the defense continued:

Q. Have you ever had other detainees who appeared tired

- A. during an interview?
Tired, yes.
- Q. Okay. And those were other detainees that you interviewed at Camp Whitehorse?
- A. Yes.
- Q. All right. And you had those detainees -- you noticed that condition that they were tired based on the fact that they had been kept up that the night before?
- A. They could be tired from the heat, not specifically because they were kept up.
- Q. I think you had the shock of capture, discussed with you a little bit on direct. Do you remember that?
- A. Yes.
- Q. All right. One of the ways the shock of capture could be maintained with a detainee would be to deprive him of sleep. Right? To keep him up?
- A. Yes.
- Q. It wasn't uncommon?
- A. Uncommon as a practice? What do you mean, keeping the prisoners up?
- Q. You were aware that it was going on. Right?
- A. I mean it happened, yeah. But for prisoners, I guess -- they had prisoners stand that wouldn't cooperate, like I said.
- Q. Do you recall telling guards at Camp Whitehorse -- not necessarily you personally. When I say "you," I mean the HET team. Do you recall the HET team telling guards at Camp Whitehorse to keep detainees up all night?
- A. Not this HET team. Not the guys that I worked with. (b)(6) not them. But other HET teams, yes.
- Q. So you're aware that some HET teams utilize this process of sleep deprivation?
- A. Yes.
- Q. And it wouldn't surprise you to find out that it was something that was taking place in Iraq?
- A. Yes, it wouldn't surprise me.
- Q. Your knowledge of this use of sleep deprivation by HET teams as a method to gain compliance, you learned that

during the time that you were with this HET team that consisted of the staff sergeant, the sergeant, and this other individual?

A. Not these, no. I learned it from the last HET team I worked with.

Q. Who was the last team you worked with? When I say "who," I don't mean who were the individuals. But what unit was that HET team attached to?

A. 15th MEU. But they just told me of these things like sleep deprivation. Sometimes, like if a person wasn't complying, they'd have them standing. That's about it.

Q. Just so everyone's clear, the 15th MEU was -- their HET team was at Camp Whitehorse prior to when 2/25 took over Camp Whitehorse. Right?

A. Yes.

Q. And there was a second HET team that became attached to Camp Whitehorse after the 15th MEU and their HET team left?

A. HET 17, yes.

Q. I'm sorry. HETS 17?

A. Uh-huh.

Q. They took over or they were the first ones?

A. They took over.

Q. So you had the 15th MEU HET, they left with the 15th MEU, and then HET 17 came?

A. Yes.

Q. All right. And it was the Marines from the 15th MEU HET that told you about using sleep deprivation and other techniques such as that to help gain compliance. Right?

A. I mean, you watch it in movies. It was like a common -- yeah. Everybody knew about it.

Q. So it wouldn't surprise you to find out that the HET team attached to the 15th MEU was telling guards at Camp Whitehorse to do that to certain detainees?

A. I don't know if they were telling them, sir. The guards --

Q. I understand that you don't know if they told them or not. But what your testimony is today is that based on your conversations with members of the 15th MEU's HET

team, they were utilizing sleep deprivation?

A. No. Not that they told me about sleep deprivation. They told me a lot of things. They told me these were techniques. It doesn't mean you use them, you know.

Q. So they only discussed sleep deprivation with you?

A. We discussed a lot of things. I am not saying they used sleep deprivation.

Q. All right. Let me just jump you back to the interview and interrogation with (b)(6) on the morning of 4 June. When your interview with him was completed, he was returned to the detention part of Camp Whitehorse. Right?

A. Yes.

Q. And he was basically picked up off the ground since he was flex cuffed by members of your HET team. Right?

A. Yes.

Q. And he was escorted back to the detention facility?

A. I walked him back, yes.

Q. You walked him back?

A. Yes.

Q. He didn't appear to be in any kind of physical distress when you escorted him back. Right?

A. No. Just fatigued, like I said.

Q. Just the heat?

A. Fatigued, yeah.

Q. Fatigued. Now, you knew prior to capturing (b)(6) a great deal about his background and why he was somebody that needed to be captured. Right?

A. Yes.

Q. And he was somebody that not only was a danger to U.S. troops in the area, right?

A. Yes.

Q. But also he had a pretty long background with Saddam Hussein's political party. Right?

A. Yes.

Q. He was essentially a hit man?

TC: Objection, relevance, sir.

MJ: Captain Folk.

DC: Sir, the relevance goes to -- I am going to establish here that that was one of the reasons he was captured. It's also relevant to illustrate the reason (b)(6) was at Camp Whitehorse. And if I can proceed with this witness for a minute --

MJ: The objection is sustained.

Questions by the defense continued:

Q. When you left Camp Whitehorse, there were no instructions given to protect (b)(6) Correct?
A. No.

Q. And in your opinion, that was a mistake. Right?
A. Yes.

Q. And that was a mistake because he was somebody that was hated by local Iraqis. Correct?
A. Yes.

Q. He was hated because of his --

TC: Objection. Speculation, foundation.

MJ: Sustained as to foundation.

Questions by the defense continued:

Q. In the course of your dealings with the HET team, collection of intelligence in Iraq, did you become aware of (b)(6) background in regards to what he was doing under Saddam Hussein's regime?
A. Yes.

Q. You became aware of the activities that he was conducting on behalf of the regime. Right?
A. Yes.

TC: Objection. Relevance to this whole line of questioning, sir.

MJ: Captain Folk?

DC: Sir, this witness is going to tell you that --

MJ: What's the relevance. I don't care what the witness is going to tell me.

DC: The relevance is that it goes to (b)(6) relationship with some of the other detainees at the detention facility, sir.

MJ: What relevance is that?

DC: He was at Camp Whitehorse surrounded by other individuals who may have known him. What this witness is providing testimony about is the fact that the failure to protect him around these other detainees was a mistake because of the fact that they probably wanted to hurt him.

MJ: Do you have any information to lead you to believe that there was another source of the injuries that he sustained?

DC: Sir, other than this witness's testimony that it was a mistake not to have (b)(6) guarded, no.

MJ: Trial counsel?

TC: Sir, first of all it's irrelevant, number one. Number two, it is completely speculative as if there was anybody in the camp who disliked (b)(6) or even knew who he was. And three, it's hearsay. If he's going to say someone at the camp told him that.

MJ: Members, can you step out for a minute.

The members departed the courtroom.

MJ: Mr. (b)(6), would you step out as well. Just wait outside, please.

The witness departed the courtroom.

MJ: Be seated, everyone. The record will reflect the members have departed this courtroom as well as the witness.

Captain Folk, I think I understand where you're going. But I need something more from you as to other than just

this theory. Do you have anything that indicates that the people that were there at the detention camp were aware of who (b)(6) was and his background?

DC: Sir, during the -- this is kind of a long-winded answer to your question. During his deposition, this witness stated that he believed people in that camp would have known who (b)(6) was because of how powerful his family was, how well known they were, and the extent of his activities. So to answer your question, that is the evidence I have that they would know who he is.

MJ: And what's the basis of this witness's knowledge?

DC: Essentially, his activities as a member of the HET team, which went around gathering this privileged information from the sources that were in Iraq.

MJ: Privileged information? What do you mean by that?

DC: Well, their sources -- they don't disclose the names of their sources apparently, according to the members of the HET team. So they go.

MJ: I don't think privileged is the right word. Perhaps confidential.

DC: Confidential. These are their words, not mine, sir. But they go around to these sources that are confidential, they gather information, and they exploit, which is how they captured (b)(6) in the first place and how they found out about the whole connection with the 507th Maintenance Battalion.

MJ: Government?

TC: First of all, sir, it is speculative. He's going to speculate that other people at Camp Whitehorse would have known who he was. So that's complete speculation. And number two, it's hearsay.

MJ: Which part of it is hearsay?

TC: If he's going to say, Well, I believe that (b)(6) would have been hated by people at Camp Whitehorse, well where is he getting that information?

MJ: All right. Anything else, Captain Folk?

DC: Other than to say, sir, that the same sources that divulged information about (b)(6) connection with the 507th, we've been utilizing and accepting its knowledge in this case, the same sources that would identify (b)(6) connection with Iraqi political parties.

MJ: Well, except that the people that have testified indicated that they believed that. Whether he was actually involved or not is not at issue. What is at issue is whether they believed that. The question here is whether or not you have anything that would indicate that there were people that didn't like (b)(6) or thought that he was a hit man, irrespective of whether he was a hit man or involved with Saddam Hussein or anything else. The issue is whether or not any of the people in the detention facility were aware of that or actually believed that; thus, they would have a motive to bring some harm to (b)(6).

At this point I'm going to sustain the government's objection. I will state for the benefit of the record, I have applied a 403 analysis. And I believe we're getting too far down that any probative value is far outweighed by the waste of time. And I'm going to sustain the government's objection.

Bring the members back in. Bring the witness back in as well.

Major Francis, can you grab the witness, please.

The witness and the members entered the courtroom.

MJ: Lance Corporal (b)(6) if you'll go ahead and take your place at the witness stand.

The Court will come to order. Be seated, everyone. The record will reflect that the members have returned to the courtroom. The witness is still on the stand. Captain Folk.

DC: Yes, sir.

Questions by the defense continued:

Q. Lance Corporal (b)(6) I want to draw your attention back to this whole issue of sleep deprivation. Do you recall the deposition you participated in on 5 June in

(b)(6) earlier this year?

A. Yes.

Q. Do you recall that we discussed the whole issue of sleep deprivation during the course of that interview?

A. Yes.

Q. Do you remember me asking you if it was fairly common in certain cases for HET team members to give directions to guards to keep up detainees at night so they would be tired?

A. Well, I went all over Iraq. Yes, I've seen detainees standing. It could have been -- I seen people ordering detainees to -- like the guards to keep the detainees standing for certain reasons.

Q. Okay. I might be a little bit confused. I need to understand this.

A. Okay.

Q. In your experience as a HET team member, was it common or uncommon to see sleep deprivation in any form used as a technique on some detainees?

A. I've seen it done. But there's other people -- not with the members, like my members, the people that I worked with doing it, but other people. There's other agencies -- intel agencies that were out there. And I've seen it, yeah. I seen detainees standing.

Q. Let's talk about HET teams then. You have seen other HET teams using that technique?

A. HET team, no. Not specifically, no. Except for, like, standing. But it is not considered sleep deprivation if a person is non-compliant. That, I've seen.

Q. So if somebody just wasn't being complaint and they were told to stand all night, that wouldn't be considered sleep deprivation?

A. No, no, no. Not all night. It was just stand here instead of going to the cell, keeping them away from the other prisoners.

Q. So keeping a prisoner standing was common or was acceptable?

A. Yes.

Q. Keeping prisoners isolated was acceptable?

A. Isolated for a period of time during our interviews.

Q. So you have seen these techniques used before?
A. I've seen prisoners standing, yes.

Q. And when I asked you that question at that previous deposition where I said, "It was fairly common in certain cases for the HET team members to give directions to the guards to keep the guys up so that they would be tired?" And your answer was, "Yes, sir. We need to talk to this guy. So keep him awake for us." That wasn't totally accurate?
A. Yeah. That's guys that are not compliant, like don't -- if they weren't compliant, we would say that.

Q. Well, in your answer, "So keep him awake for us," would seem to imply you are keeping him up, as in not letting him sleep. Right?
A. Okay. Yes.

Q. So in your answer in that deposition that you made under oath on 5 June when you said, "We need to talk to this guy. So keep him awake for us," were you or were you not referring to the use of the sleep deprivation technique?
A. Well, yes, if he wasn't compliant. You see, that's sleep deprivation but it's not like what we were doing. Because if the person wasn't compliant, you would have them stand outside. We take him personally and stand outside until he complies with us. Like he would resist and try to get out of the flex cuffs, yes, until he gets tired so he would calm down.

DC: I don't have any other questions, sir.

MJ: Major Francis?

TC: Yes, sir.

MJ: Address your comments to me or the witness.

TC: I'm sorry.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. Lance Corporal (b)(6) Captain Folk was talking about this deposition that we had in New York state. Correct?

A. Yes, sir.

Q. You were there?

A. Yes, sir.

Q. I was there?

A. Yes, sir.

Q. Captain Folk was there?

A. Yes, sir.

Q. Sergeant Pittman was there?

A. Yes, sir.

Q. Mr. Higgins, Major Paulus' attorney was there?

A. Yes, sir.

Q. Captain Jasper, another attorney for Major Paulus was there. Correct?

A. Yes, sir.

Q. Colonel Applegate, full-bird Colonel of Marines, the deposition officer, and he was there. Correct?

A. Yes, sir.

Q. There was a court reporter there typing down every word you said?

A. Yes, sir.

Q. And there was a recording device right in the middle of the table recording every words you said.

A. Yes, sir, I remember, sir.

Q. I had you stand up just like I had you do here today. And I had you raise your right hand. Right?

A. Yes, sir.

Q. I asked you to swear that you were going to tell the truth and nothing but the truth so help you God?

A. Yes, sir. And I'm trying to recall, sir, as much as possible. I remember saying that.

MJ: Wait. Wait. Wait. Wait. There's not a question. Wait until he asks you a question.

THE WITNESS: Yes, sir.

Questions by the defense continued:

Q. Captain Folk, during that deposition, asked you the following series of questions, and these were your answers?

A. Yes, sir.

Q. I'll do the question and then I'll do the answer. You tell me if this is accurate.

A. Yes, sir.

Q. First of all, Captain Folk asked you a question dealing with (b)(6) and fatigue. The question was, "When you said you looked tired -- looked fatigued, the HET teams were interested. It was beneficial to them to have this kind of shock of capture maintained as long as possible prior to the interview. Right?" And your answer, "Yeah, you could say that."

A. Would you say that is an accurate response by you?
Yes, sir.

Q. Then the next question Captain Folk asked was, "Was keeping a detainee up, keeping --" Then you asked the question, "Sleep deprivation?"

A. Yeah. That's what I thought you guys were referring to.
Yes, sir.

Q. Then the next question Captain Folk asked, he said, "Sleep deprivation. That's one way to kind of maintain that shock of capture, isn't it?" And your response was, "It is."

A. Yes, sir.

Q. And then the next question Captain Folk asked, "And it's not necessarily one that is inappropriate?" And your response was "No." Correct?

A. Yes, sir.

Q. Then the next question Captain Folk asked was, "So it wasn't necessarily surprising that you see this guy tired," referring to (b)(6). Correct?

A. Yes, sir.

Q. And your response was, "No, not at all."

A. Yes, sir.

Q. And then the next question Captain Folk asked was, "It was fairly common in certain cases for the HET team members to give directions to the guards to keep the

guys up so that they would be tired. Right?"

A. Yes, sir.

Q. And your response was, "Yes, sir. We need to talk to this guy. So keep him awake for us."

A. Yes, sir. If he guy wasn't compliant, yes, sir. Sir, that's what I am trying to say.

Q. Well, let's wait. The next question was, "Do you remember if you gave specific instructions to the guards at Camp Whitehorse regarding specifically how to keep people up; or was it just, Hey, keep this detainee up?" And your response was, "Sir, it was like certain individuals that you say keep up." And then his question, "Correct." That was your response?

A. Repeat that, sir, one more time.

Q. His question was, "Do you remember if you gave specific instructions to the guards at Camp Whitehorse regarding specifically how to keep people up; or was it just, Hey, keep this detainee up. And your response was, "Sir, it was like certain individual that you say keep up."

A. Yes, sir. Can I make a comment, sir?

Q. No. Next question Captain Folk asked, "Maybe my question wasn't clear. Did you ever give them specific questions about how to keep them up?" "No." Correct?

A. Yes, sir.

Q. And then the last question on that line of questioning was, "The guidance was just keep them up?" And your response was, "Keep them on their feet."

A. Yes, sir.

Q. So my question is when you gave the response to Captain Folk, "yes, sir, we need to talk to this guy so keep him awake for us."

A. Yes, sir.

Q. How is the word awake not sleep deprivation?

A. Sir, when they would go back inside the camp and go right to sleep -- let's say we were interrogating somebody and they weren't cooperative, they were acting up, they were trying to play us, we would go interrogate somebody else and leave him in a barbed wire fence outside until we go back and talk to him because he wasn't cooperative. Sleep deprivation, from what I am understanding of people telling me, is like keeping them

up all night long and for days, like torturing them.

Q. Well, when Captain Folk asked you about (b)(6) and he said, "He looked fatigued. Did that surprise you?" And you said, "No, it didn't surprise me." What were you referring to?

A. No, it didn't surprise me because he could have acted up inside the camp. I wasn't there 24 hours. And prisoners that acted up had to stand outside. And I seen that. But I wasn't saying -- we didn't tell them at all to keep (b)(6) up, sir.

TC: All right. I have no further questions.

MJ: Captain Folk, anything else?

DC: No, sir.

MJ: Any members have questions for this witness?

Affirmative response by one member.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

Q. Lance Corporal (b)(6) did you ever inquire of (b)(6) if spoke English?

A. Yes, I believe I did, sir. I always ask prisoners if they speak a little language.

Q. And what was his response?

A. I think he said a little bit. I'm not too sure.

Q. Your recollection was he said he spoke a little?

A. I think so. I forgot, sir. I actually forgot.

Q. Was there anything about his interaction with you during the interview process that would have led you to believe he understood the questions as they were coming from the sergeant before you translated?

A. I think certain reactions that he had.

Q. So your impression was that he may have understood some of the sergeant's questions before you translated it?

A. Yes. I think so.

Q. Do you have an opinion as to why (b)(6) became

A. complaint during the interview process?
Well he wasn't fully complaint, but he became a little more cooperative. He wasn't too cooperative.

Q. Do you have any opinion as to why?

A. I'm not sure, sir.

MJ: Does that answer the members's questions?

Affirmative response from the member.

MJ: Any questions by any other member? Colonel Sprague, I'm not going to ask your question. Any other questions?

Negative response.

Government, any other questions?

TC: No, sir.

MJ: Defense?

DC: No, sir.

MJ: Warning or recall?

TC: Warning, sir. No recall.

DC: No, sir.

The witness was warned, excused, and withdrew from the courtroom.

The court-martial recessed at 1706, 26 August 2004.

The court-martial was called to order at 0813, 27 August 2004.

Sergeant (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am currently a sergeant in the United States Marine Corps Reserve. My unit is 2/25. I own a restaurant/bar in my civilian occupation. I reside in (b)(6)

(b)(6)

I deployed in support of Operation Iraq Freedom with 2d Battalion, 25th Marines. Before I went to Iraq, I went to Camp Lejeune for a few days. When I was there, I did receive brief training on EPW handling and the law of war from Major Paulus. I can't recall whether the Geneva Convention was mentioned in that class.

When I arrived in Iraq, I was assigned as one of the guards at the Camp Whitehorse detention facility. I was there from early June until the end of June 2003. The officer in charge of the facility was Major (b)(6) and was changed to Major Paulus. The SNCOIC was Staff Sergeant (b)(6) Sergeant Pittman and Lance Corporal (b)(6) were guards who worked there.

On 4 June 2003, I was on watching the prisoners. Lance Corporal (b)(6) and Lance Corporal (b)(6) were on my shift. I was working the 0800 to 1200 shift. During this time, I did guard a prisoner by the name of (b)(6). The HET told me that (b)(6) might be important and I should pass that word on.

When I came on shift, (b)(6) was just he was just laying on the floor sideways and gasping for air. He seemed to be tired. He did have a sandbag on his head. He had flex cuffs on his wrists. I had to physically escort him to speak to the HET. I picked him up from the ground and guided him to the place where the HET was interviewing. While I was guiding him, he was sluggish. He just seemed to be suffering from exhaustion.

(b)(6) was interviewed by the HET anywhere between 20 to 40 minutes. I escorted (b)(6) back to the cell. He still had a sandbag on his head and flex cuffs on his wrists. When I placed him down, he just laid on the floor again. It kind of troubled me, so I asked one of the other prisoners that was with him to give him water because it was extremely hot. He seemed like he was suffering from heat exhaustion. He was gasping. It seemed like he had troubled getting air, like after a big run of four or five miles. He drank some water at the beginning, but usually he would refuse anything that was given to him. During my shift, I did not strike (b)(6) in any way. Neither of the other two members of my shift struck (b)(6) in any way.

I saw (b)(6) the following day during the 1200 to 1600 shift on 5 June 2003. At this time, he was in a different cell. He was by himself. He just laid on the ground again. He did not have cuffs or a bag over his head. He was still breathing the same way. I didn't see him drink any water. There were certain days that we recorded temperatures at 130. It was extremely hot. Towards the end of the shift, he tried to crawl towards the box where they use the bathroom. He didn't make it. The box was maybe 5 feet away

would who just got done running a PFT. (b)(6) was gasping in a way similar to someone who has asthma.

When I went to physically lift (b)(6) off the right side of his body, he didn't yell or scream like he was in any kind of pain. After I helped him up, he was just walking on his own with my guidance. He didn't have any difficulty walking to the HET interview or return from the HET interview. He made that asthmatic sound the whole time. Following the HET interview, Mr. (b)(6) went back into the holding cell. He returned to laying down on his side.

I saw (b)(6) trying to move towards the box that they used for a head. I saw Major Paulus, Major Froeder, and Staff Sergeant (b)(6) there. Lance Corporal (b)(6) was also present. I never saw (b)(6) land in the concertina wire. I was standing outside the hatch while he was being dragged out of the room. I knew (b)(6) was being dragged, but my focus was on the other prisoners.

On the night (b)(6) died, I saw him laying on the ground. I was briefed that he had defecated on himself again. That's why he didn't have clothes and was outside. A few minutes into my shift, I checked on all of the prisoners. I sent one of my Marines to check on (b)(6) to make sure that he was also okay.

On the afternoon of 5 June, I think the cell that (b)(6) was in was cleaned. I am speculating, so I can't really say.

REDIRECT EXAMINATION

Questions by the prosecution:

When I had my shift on 4 June from 0800 to noon, I hadn't received any information that (b)(6) had been punched or kicked.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

The alert that was sounded at Camp Whitehorse because of the sheik occurred immediately after my shift. The shift that was on their scheduled watch remained there to watch over the prisoners. The other Marines were on the berm and in defensive of positions.

On 4 June, when I returned (b)(6) from the HET interview, he seemed to be having difficulty breathing. The corpsman checked him when he arrived and I am pretty sure he was checked that

morning as well. The only time I ever talked to a corpsman to check on (b)(6) was on the 5th after he defecated on himself. I did not talk to the corpsman about (b)(6) condition.

I have heard of a technique called the 50/10. The technique is where prisoners are supposed to stand for fifty minutes and sit down for ten minutes. I never received any instruction on doing that. I was never told to do it. I never attempted to keep any prisoners standing for fifty minutes because I didn't believe in that. I never witnessed any other guards attempting to impose this 50/10 technique. I never heard any guards talking about it. The incoming prisoners usually would be kept awake their first night so they would be tired when they spoke to the HET the next morning. I never had a shift where we received a new detainee. So I never had to apply that technique.

I never observed any Marines strike, punch, or kick any of the detainees. I never struck, kick, or punched any detainee.

REDIRECT EXAMINATION

Questions by the prosecution:

When I first saw (b)(6) it was only my second day at the Camp Whitehorse detention facility.

RECROSS-EXAMINATION

Questions by the defense:

The first time I heard the term "50/10" was during the investigation conducted by NCIS following (b)(6) death. That wasn't a term that I ever heard any of the guards discussing at Camp Whitehorse.

Corporal (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Corporal (b)(6) I am a corporal in the United States Marine Corps Reserve. My current unit is 2d Battalion, 25th Marines. I live in (b)(6)

I deployed with 2/25 in support of Operation Iraqi Freedom. Just prior to going to Iraq, I went to Camp Lejeune with 2/25. When I

was at Camp Lejeune, I received training on the five Ss and a T. I believe Sergeant Pittman was in the classes with me.

I was assigned to the Camp Whitehorse detention facility maybe about two and a half months after getting to Camp Whitehorse. I do remember guarding a prisoner by the name of (b)(6). My shift consisted of myself, Corporal (b)(6) and Lance Corporal (b)(6). Corporal Antoine was the shift NCO. Our shift was about 0400 to 0800. I did have an opportunity to observe (b)(6). He wasn't really active. He basically just laid there for the most part. He was moaning. I don't believe he had a sandbag over his head, but he did have flex cuffs on his wrist.

Marines on my shift never punched an EPW to get him to stand up. Specifically with (b)(6). I went in there and kind of slapped him twice to get him to stand up. I slapped him in the chest area with an open hand. It wasn't any harder than trying to get someone's attention if you are talking to them. (b)(6) reaction was unresponsive. He was still moaning. He did not get up. Lance Corporal (b)(6) also attempted to get (b)(6) up. I believe he slapped him as well. I wouldn't say it was a punch. We weren't trying to hurt him. We were just trying to get his attention. He was still unresponsive. At that point, we just realized he was not going to stand up. So we left him. He never stood up.

I didn't see anybody on my shift knee (b)(6) in the thighs, punch him in the chest, stomp on his chest, kick him in the back, punch him in the back, or punch him in the stomach. That shift was my only recollection of (b)(6).

We had heard that (b)(6) had an M-16's from the 507th on him when he was captured. I never saw (b)(6) eat or drink anything.

CROSS-EXAMINATION

Questions by the defense:

My June 4 shift was from 0400 to 0800. I am not a hundred percent about the time. It could have been from midnight to 0400.

EXAMINATION BY THE COURT

Questions by the military judge:

(b)(6) was moaning. He didn't appear to have any difficulty breathing. He was not weeping at all.

REDIRECT EXAMINATION

Questions by the prosecution:

(b)(6) wasn't gasping.

EXAMINATION BY THE COURT

Questions by the military judge:

(b)(6) was moaning. He could have been trying to say something. I couldn't really make out what he was trying to say. He was just moaning. There wasn't any gasping or anything like that.

Staff Sergeant (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Staff Sergeant (b)(6). I live in (b)(6).
(b)(6) I am a staff sergeant in the United States Marine Corps Reserve. I am a member of Weapons Company, 2/25.

I deployed in support of Operation Iraqi Freedom. On 3 June 2003, I was located at a museum up by the Euphrates River where the battalion COC was. I participated in a patrol that night. We had gotten intelligence that an Iraqi in one of the villages about 30 clicks from Nasiriyah had one of the weapons from the 507th Maintenance Battalion. When this mission took place, I went to a house to meet up with an informant. I do remember meeting up with a member of the HET at that house.

(b)(6) was an individual who was detained as part of our patrol. He was placed in my HMMWV and appeared to be normal. He didn't look to be in any pain and didn't appear to have any trouble breathing. I never saw any Marines hit, punch, or strike
(b)(6)

After dropping (b)(6) off at the detention facility, I believe I spoke the Sergeant Pittman that night. I don't recall if I mentioned to Sergeant Pittman the significance of (b)(6). At the time I turned (b)(6) over to the Camp Whitehorse Detention facility, his physical condition appeared to be normal.

CROSS-EXAMINATION

Questions by the defense:

During the time that I spent with (b)(6), he didn't speak any English. There was no difficulty offloading (b)(6) from the HMMWV. I don't recall seeing (b)(6) get strip searched. I have seen that happen with other detainees that I brought there. I didn't notice any use of unnecessary force by anybody at Camp Whitehorse when I saw the inprocessing. There are normally officers and SNCOs present when a detainee is dropped off at Camp Whitehorse.

I have been a (b)(6) for eight years in my civilian job. I have received training in use of force. I have (b)(6)

When I went to Iraq, on of my additional duties was training the An Nasiriyah police. Necessary force is whatever force is necessary to accomplish that particular mission.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

When I first saw (b)(6), he was being led back to my vehicle in flex cuffs. I didn't know he was having difficulty breathing. I have heard of asthma. I have heard somebody who is suffering from an asthmatic attack. I didn't hear or witness anything like that.

(b)(6) road in the back of my HMMWV with his back against the tailgate back to Camp Whitehorse. I was in the back of the HMMWV as well with my chest up against the cab of the vehicle looking over the top. I observed (b)(6) at times when I turn around. I can't recall anything unusual about the drive back, such as sudden turns or braking or anything that would have caused Mr. (b)(6) to be thrown from side to side or anything. Once we got to Camp Whitehorse, I can't remember specifically witnessing (b)(6) offload.

Lance Corporal (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am a lance corporal in the United States Marine Corps Reserve. I am assigned to 2/25. On 3 June 2003, I was in Iraq. I participated in a patrol that night. The purpose of that patrol was to recover on M-16 and to detain a (b)(6). After (b)(6) was detained, he was placed in my HMMWV. I was sitting across from (b)(6) on the bench.

During the time that I saw (b)(6) he didn't appear to be having any problem breathing. He didn't appear to be in any pain. He was not sick. He never tried to speak to me. I never saw anyone try to hit, punch, or kick, (b)(6) I never hit, punch, or kick (b)(6) I didn't see (b)(6) unloaded from my vehicle. The last time that I saw (b)(6) he appeared to be in a healthy physical condition.

Lance Corporal (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am currently a lance corporal in the United States Marine Corps Reserve. I am assigned to 2/25. I live in (b)(6) I deployed in support of Operation Iraqi Freedom with 2/25. When I got to Iraq, I was stationed at Camp Whitehorse defense facility. I was a guard of the detainees. I started guarding prisoners a couple of days after we got there.

I recall having a prisoner by the name of (b)(6) My first recollection of (b)(6) was him just sitting down and with a sandbag and flex curts. I didn't have any interaction with him at that time.

My shift consisted of me, Sergeant (b)(6) and Lance Corporal (b)(6). I don't recall anything of significance happening with (b)(6) on my first shift with (b)(6) My next recollection of (b)(6) was 5 June during my 1600 to 2000 shift. I walked in and saw Corporal (b)(6) He told me that one of the EPWs was being belligerent. I walked in and saw Major (b)(6) and Major Paulus. I knew it was serious because they are not there unless

it is something.

(b)(6) was in the corner and is surrounded by a puddle of feces. The feces was seeping out through his robe. I was told by one of the majors that the area and the prisoner had to be cleaned up.

I grabbed (b)(6) by the armpits so I could drag him to the other side of the room away from the puddle of feces. While I was dragging (b)(6), he was talking in his language. I would try to talk to him and tell him to go. He just looked straight up and just talked in his language.

Major Paulus then told me to stand him up and have him face the window. After I stood him up, he fell into the concertina wire, face first. It was like he dives in. He is still clothed at this time. After he fell, I turn around and go towards him. He was holding onto the wire. At this time, Sergeant (b)(6) our interpreter, walks in.

Major Paulus or Major (b)(6) told me to get (b)(6) out of the wire. I told them that he was holding onto the wire. They then told me to just get him out. So I grabbed one hand and tried to pull it out. (b)(6) then let go of the wire. His upper torso was in the spiral gaps. So it was his clothes that got caught. I rolled him out of the wire into the middle of the room. He was on his back. I was then told to take off his clothes because they were ripped. I can't remember if Major Paulus or Major (b)(6) gave me the order.

I thought (b)(6) was being belligerent. He wouldn't listen to me when I told him to stand. He just looked at me. Up until this time, I never observed anyone punch, kick, or knee (b)(6).

After taking off (b)(6) clothes, we were told to burn the clothes. I sent (b)(6) to go remove the clothes and take them outside to burn them. That's when I was then given the order by Major Paulus to take (b)(6) to the outside cell.

I tried to get (b)(6) to stand up so we could take him outside. He wouldn't stand up. He just kept talking in his language. It sounded like he was saying a prayer or something. I asked him to go. I told the interpreter to tell him to stand and walk outside. He ignored me.

(b)(6) had defecation on his chest, his hands, all over. I really didn't want to touch him. That's when Major Paulus told me to just drag him out. I was going to drag him out by his hair.

Major Paulus then told me to drag him out by the neck. So that's when I carefully placed my hands at the bottom of his neck and cupped it on his chin. I didn't want to hurt the guy.

After dragging (b)(6) three feet, I stopped and asked him to stand again. I had the interpreter ask him to stand as well. He just looked up and started talking in that language again. So I figured he was just being belligerent.

When I was dragging (b)(6) his legs were straight out. His hands were not bracing my hands at all. I believe they were on the floor. He was pretty much dead weight when I was pulling him. After dragging (b)(6) a second time, I again stopped and asked him to stand. I ended up dragging (b)(6) 15 to 20 feet to the outside recreation pen.

When I first got there, I nudged him to stand with the side of my foot. I never kicked him really hard. I never punched him. I never kneed him in the thighs. I never saw anyone on my shift kick, punch, or knee him.

I am testifying under a grant of testimonial immunity. I did go the an Article 32 hearing.

CROSS-EXAMINATION

Questions by the defense:

I took (b)(6) from the cell he was in and out to the reck vard. When I came on shift, I heard from Sergeant (b)(6) that (b)(6) was being belligerent. He had already defecated on himself when I came on shift. Major Paulus and Major (b)(6) were both present. Sergeant Pittman wasn't there.

The first thing I had to do with (b)(6) is move him from one part of the cell to the other. To do that, I grabbed him under his arms. Once I pulled him away from the puddle, I turned him around and had him sit Indian style facing the wall. I was then told to have him stand. I grabbed him from the shoulders. He kind of he helped himself up. At that point, he goes into the concertina wire, catch himself on the ledge, and gets hung up.

When he was holding onto the concertina wire, he had a strong grip with both hands on one strip of wire. When I got him out the wire, we moved him to the center of the room. I was then ordered to take him out to the reck yard. There was about a 12-inch to 18-inch drop from the edge of the concrete to sand, and then goes out to where the reck regard is. This was a very uncomfortable

process for me because he was covered in feces. I was wearing gloves and was trying not to get feces on me.

In the course of actually moving him, I had to lay him down a few times. I was trying to get him to stand and walk actually walk out. During the dragging, my left hand was under his neck. My right hand was cupping his chin.

EPWs cleaned out the cell that (b)(6) was in. I don't know if (b)(6) was seen by a doc prior to me dragging him. Doc (b)(6) did see him in the reck yard. Major (b)(6) and Major Paulus were present while the doc was looking at him.

Shortly after I took (b)(6) to the reck yard, there was an alert sounded at Camp Whitehorse. We were told to go suit up in our combat gear. When I went to get my combat gear, I noticed Sergeant Pittman was right behind me. Sergeant Pittman took a very active role in getting people to calm down and directing Marines where they needed to go in order to defend Camp Whitehorse.

I would say I dragged (b)(6) 20 to 25 feet from the cell to the reck yard.

REDIRECT EXAMINATION

Questions by the prosecution:

After the prisoners were done cleaning (b)(6), there were no other prisoners out in the reck pen with (b)(6). The other prisoners were all in the middle building. After (b)(6) was cleaned, I didn't see any prisoners running or coming from that back reck pen.

RECROSS-EXAMINATION

Questions by the defense:

Our guard shift remained on alert for 30 minutes to an hour after the alert was sounded. When the alert was sound, I recall seeing the sheik. I saw him in the building where (b)(6) was taken out of after Sergeant Pittman was calming everybody down.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

There was a sidewalk area just outside the building that more or less wrapped around the building. There was a drop from the sidewalk down to the dirt anywhere from 12 to 18 inches. As I moved (b)(6) from the sidewalk down to that dirt area, I put my left hand under his armpit area and assisted him down to the ground. His upper back and shoulder blades didn't strike the ground at all.

After I got (b)(6) to the recreation pen, he was cleaned by the Slim Jim brothers. (b)(6) remained in that area during the alert. I never returned him to his cell. When I left after my shift, (b)(6) was still in the reck yard.

Lance Corporal (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Lance Corporal (b)(6) I reside (b)(6) I am a lance corporal in the United States Marine Corps Reserve. My unit is 2/25.

I was assigned as a guard in Iraq during the period of 3 June to 6 June 2003. My guard shift consisted of myself, Lance Corporal (b)(6) and Corporal (b)(6) I remember a prisoner named of (b)(6). The first time I remember observing (b)(6) was during the inprocessing.

The next time I saw (b)(6) was somewhere between my 1600 to 2000 shift. (b)(6) was laying down and relaxed. To my knowledge, he wasn't having any difficulty breathing. He didn't appear to be in any pain. The night before (b)(6) died, I was working the 2000 to 2400 shift. (b)(6) was still laying down.

On my 5 June shift, I noticed (b)(6) was laying in the outside laying down naked. He was sick. He had defecated on himself. That is the last time I saw (b)(6)

I never did hit, punched, or strike (b)(6) I never observed any other guard hit, strike, or punch (b)(6)

CROSS-EXAMINATION

Questions by the defense:

The first time I saw (b)(6) was during his inprocessing. I didn't see any unnecessary force used with (b)(6). I never saw Sergeant Pittman hit him or anything.

Sometimes, prisoner would resist during a strip search. I never saw Sergeant Pittman use any unnecessary force to do anything to anybody during inprocessing.

When (b)(6) came into the camp, I was working between 1600 and 2000. When (b)(6) first came in, he was wearing a sandbag. During the 50/10. I don't recall if (b)(6) was wearing the sandbag. (b)(6) seemed fine during this shift. I didn't notice any difficulty with him breathing.

On 5 June, (b)(6) had defecated and was in the reck yard. I don't recall a doc coming out and checking (b)(6) at that time. I know the doc had checked on (b)(6) when he had defecated on himself twice before. I didn't know who (b)(6) was at the time that I was guarding him. I didn't receive any specialized training on how to handle EPWs while I was at Camp Whitehorse.

Lance Corporal (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Lance Corporal (b)(6). I am currently a lance Corporal in the United States Marine Corps Reserve. I am assigned to 2d battalion, 25th Marines. I am originally from (b)(6).

I deployed in support of Operation Iraqi Freedom. During that deployment, I was assigned as a guard at the Camp Whitehorse defense facility. I arrived at the facility in April 2003. I worked there until July 2003.

During 3 to 6 June 2003, my shift consisted of Corporal (b)(6) and Lance Corporal (b)(6). I remember guarding a prisoner by the name of (b)(6). He was no different than any other prisoner to me. On 4 June 2003 was the first time I saw (b)(6). My shift was from 1200 to 0400. (b)(6) was inside the jail laying down. It seemed like something was wrong with him. He was moaning a

little bit.

During my shift, I was required to have (b)(6) stand. The purpose of making the prisoners stand was to make them a little bit more tired when they spoke with the HET. In order to make a prisoner stand, we used mostly voice commands. If the prisoner would not stand, we would pick him up. We also intimidated them with yelling and stuff like that. I never resorted to punching them. I do not recollect anyone kneeling them in the thighs.

(b)(6) seemed like he was sick. So after a couple of tries of giving him voice commands trying to get him up, we just left him alone. I didn't see anybody on my shift punch, kick, or knee Mr. (b)(6). I didn't do any of those things.

The next time I saw (b)(6) was the second night on the next shift from 0400 to 0800. At 0600, he was given a meal. He refused it and was not eating. Right before the shift switch, all of the prisoners were required to leave the jail so the jail can be cleaned up. That's when everybody left and (b)(6) would not get up. So me and Lance Corporal (b)(6) went into the cell and tried to get him up. He put his hands up asking to help him to get up. We grabbed him from both sides and lifted him up. He walked out on his own without any problem. That was the last time that I saw (b)(6). I never saw anybody kick, punch, or hit (b)(6). I didn't kick, punch, or hit (b)(6) either.

CROSS-EXAMINATION

Questions by the defense:

I am a member of the H&S Company. I am an 0151 admin clerk. I am a computer engineer when I am not a reservist. I didn't receive any training in the handling of enemy prisoners of war prior to arriving at Camp Whitehorse other than a little briefing. There was no training on the use or force with detainees.

When I arrived at Camp Whitehorse there were already detainees present. There was already a procedure in place for how detainees would be brought into the facility. It was common while I was a guard for prisoners to stand up on their first night. After the HET interview, the detainees would be released into a general population of prisoners if HET said it was okay.

The first night I worked with (b)(6) he was supposed to be standing. The two other prisoners who were brought in with Mr. (b)(6) were also supposed to be standing on that evening. Of the three, (b)(6) was the only one that refused to stand. I

attempted to get (b)(6) to stand up. I don't think (b)(6) had a sandbag over his head that first night. I don't recall anything out of the ordinary about how he was behaving during that period of four hours I was watching him. He never struck me as somebody that I would remember. He was just one of the regular prisoners. I do believe (b)(6) was flex cuffed that first night.

(b)(6) didn't respond to our commands to get up. He just kind of laid on the side and was moaning. It seemed like something was wrong with him. I think a corpsman had already seen (b)(6). A corpsman was not contacted on our shift. (b)(6) moaning wasn't so severe that I thought we needed to get him medical attention right at that moment. We tried tapping him on the side to get him up. He didn't respond. I don't recall if he made eye contact with me that first night.

The next time I saw (b)(6) was the following day on the everything of 5 June. I worked from 0400 to 0800. 0600 is the normal time for the detainees to get food and water. Then they would be taken outside to the reck pen to stretch their legs.

(b)(6) just looked at his meal and then turned away. Everyone walked out of the jail after their meal except (b)(6). He put his hands up like he needed help. So myself and Lance Corporal (b)(6) helped him up. (b)(6) walked outside after that. He didn't appear to be in any kind of physical distress.

Corporal (b)(6), USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Corporal (b)(6). I am currently a corporal in the United States Marine Corps Reserve. My current unit is 2d Battalion, 25th Marines. I currently reside in (b)(6).

(b)(6)

I deployed in support of Operation Iraqi Freedom. I was a prison guard stationed at the Camp Whitehorse defense facility. I was there from April 2003 until July 2003. We work eight-hour shifts. I worked with Lance Corporal (b)(6) and Lance Corporal (b)(6). On 4 June 2003, I recall guarding a prisoner by the name of

(b)(6). I was on the midnight to 0400 shift. (b)(6) was sitting down in his cell. (b)(6) was required to stand up during that shift for sleep deprivation. When we got to Camp Whitehorse, the sleep deprivation technique was already in place.

We used the word "goom" to have the prisoners stand. If they wouldn't stand, we tried to pick them up under their arms to stand them up. I never allowed members of my shift to resort to punching or kicking or kneeling prisoners to get them up.

We tried to make (b)(6) stand up, but he wouldn't stand up. We had no success in getting him up and making him stay up. We left him to sit down because there was no way to get him to stand up. It didn't make any sense to try to get him up all night.

The next time I saw (b)(6) was the next day from 0400 to 0800. He was asleep when I went in. I don't remember anything of significance with (b)(6) on that day. I never saw anyone punch, kick, or knee (b)(6) in any fashion. I never did punch, kick, or knee (b)(6) in any fashion.

(b)(6) civilian, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I live in (b)(6) At one point, I was a lance corporal in the United States Marine Corps Reserve. I deployed in support of Operation Iraqi Freedom. From 3 June to 6 June 2003, I was a guard assigned to the Camp Whitehorse detention facility. The other guards on my shift were Corporal (b)(6) and Lance Corporal (b)(6)

I remember a prisoner by the name of (b)(6). The first time I saw (b)(6) was 3 June. I believe my shift was from 1600 to 2000. (b)(6) seemed to be normal the first time I saw him. I don't know if he was having difficulty breathing because I didn't get that close to him.

The next time I saw (b)(6) was the following evening on 4 June. (b)(6) was sleeping. I didn't observe anything else about him. I wasn't aware if he was having difficulty breathing. The next time that I saw (b)(6) was the follow day on 5 June. My shift was 2000 to 2400. (b)(6) was laying in the outside pen naked and by himself. He seemed like he was weaker. He had diarrhea. I was not concerned about his health at this time because I was told that he was seen by the doc already. I didn't call a doc during my shift. We had one of the EPWs to clean him up.

During my guard shifts, I never saw anyone hit, punch or kick (b)(6). I never hit, kick, or punch (b)(6).

(b)(6) civilian, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I presently reside in (b)(6). At one point, I was a PFC in the United States Marine Corps Reserve. I deployed in support of Operation Iraqi Freedom. From 3 to 6 June 2003, I was a guard at the Camp Whitehorse detention facility. I worked with Lance Corporal (b)(6) Lance Corporal (b)(6) Staff Sergeant (b)(6) Sergeant (b)(6) and Sergeant (b)(6).

I was guarding (b)(6) on 4 June 2003 between 1600 to 2000. I only guarded (b)(6) once. (b)(6) looked sort of tired and had heavy breathing. (b)(6) didn't appear to be in any pain.

I never did punch, hit, or kick (b)(6) I never saw anyone else punch, hit, or kick (b)(6).

Lance Corporal (b)(6) USMCR, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am currently a lance corporal in the United States Marine Corps Reserve. I reside in (b)(6). I deployed with 2/25 in support of Operation Iraqi Freedom. I worked as a prison guard at the Camp Whitehorse detention facility from April until June of 2003.

I worked on a shift with Sergeant (b)(6) and Lance Corporal (b)(6). I recall (b)(6) being at the camp from 3 to 6 June 2003. When he was brought in, I was watching the holding facility while he was being strip searched and inprocessed. I didn't notice anything unusual at that time. I didn't typically participate in strip searching.

Later on that night, I was passing by the holding facility on my way to the head. (b)(6) was giving Lance Corporal (b)(6) a problem as far as not wanting to listen to directions and not listening. (b)(6) wasn't standing like he was supposed to. Lance Corporal (b)(6) was telling him to stand up in Arabic. When

he wouldn't comply, Lance Corporal (b)(6) went in and stood him up by lifting him under the armpits. I never saw Lance Corporal (b)(6) punch him with a fist, knee him, or strike him at all.

My shift the next day when I came on, between 2000 and midnight, it was reported from the shift prior that (b)(6) was being belligerent. He didn't want to eat. He didn't want to drink. He didn't want to comply with anything. He basically didn't do anything but sleep. Nothing else unusual happened on that shift.

The next day when I came on, between 1600 and 2000, I was told that (b)(6) had defecated on himself. I was told to go in and help Lance Corporal (b)(6) clean him up. I did see (b)(6) standing at one point in that cell. I can't recall if Lance Corporal (b)(6) stood him up. (b)(6) ended up falling into the wall and hit the top of his head. The concertina wire broke his fall. After that happened, myself and Lance Corporal (b)(6) pulled him out of the concertina wire, brought him back to the metal rack that we had in the back of the cell, laid him down, and stripped off his dirty clothes. I took the clothes to the burn pit at the back of the facility. When I came back, Lance Corporal (b)(6) has (b)(6) at the entrance to the cell where we were taking him out to the large exercise yard for prisoner. (b)(6) was naked.

My last recollection of (b)(6) was him laying in the sand after being cleaned off by two (b)(6) prisoners. He turned from side to side while he was laying there. I didn't see him do anything with his arm. I never saw anybody punch, kick, or knee (b)(6)

CROSS-EXAMINATION

Questions by the defense:

When I was in the cell with (b)(6) and Lance Corporal (b)(6) there were multiple other Marines present. It was an abnormal situation. I never before had to deal with a prisoner that was covered in his own feces. Before we actually went to get (b)(6) out of that pen, we put on some gloves and a surgical mask. While I was in the cell with Lance Corporal (b)(6) (b)(6) was stood up onto his feet. After he was stood up, he fell over just like dead weight towards the wall and into the concertina wire. He landed face and chest first on the ground with a pretty substantial amount of force when he hit the ground. I would guess (b)(6) weighted around 250 pounds. He was larger than the normal detainees at the facility. When he fell, I didn't hear him say anything during that time period.

I removed the gown that (b)(6) was wearing. He was covered in feces at this point. I wasn't able to notice any bumps, bruises, or scrapes at that point because the man was covered in feces.

(b)(6) was seen by a corpsman after he fell on his face and removed from the cell by Lance Corporal (b)(6). I actually did not witness the doc checking him out.

I believe my shift that night lasted from 1600 to 2000. The cell that (b)(6) had defecated in was cleaned. I supervised the cleaning of that cell by other detainees. The cleaning was a big job because there was a lot feces in there.

I didn't see (b)(6) get dragged out of the cell. I was at the burn pit burning the clothes of (b)(6) during the dragging. The last interaction I had with (b)(6) in the cell was after myself and Lance Corporal (b)(6) stripped him of his clothes. After that, I assisted Lance Corporal (b)(6) in carrying (b)(6) body into the exercise yard. When I started helping Lance Corporal (b)(6) (b)(6) body was at the entrance of the exercise yard. After that, I didn't see him again.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I was in the breezeway between two detention cells when (b)(6) was brought in on the 3rd. I didn't witness the actual inprocessing. My view was blocked by the wall. I never saw Mr. (b)(6) grab any of the other guards on 3 June.

Prior to (b)(6) death, I heard that (b)(6) was a bad guy and was in possession of a 507th Maintenance Company rifle. I would say that everyone that was an EPW handler knew that information.

On 5 June when I was in the cell with (b)(6) I did not see Sergeant Pittman or Lance Corporal (b)(6) I never saw Sergeant Pittman or Lance Corporal (b)(6) interact with (b)(6).

When (b)(6) fell into the wire, myself and Lance Corporal (b)(6) got him out of the wire. We carried (b)(6) away from the wire by the armpits and feet. We set him on the rack in the back of the cell. Myself and Lance Corporal (b)(6) stripped (b)(6) clothes off. Once his clothes were off, I took the dirty clothes to the burn pit. The burn pit was about 15 to 20 feet away from the building. I believe I just through the clothes into the burn pit at that time. I came back to assist Lance Corporal (b)(6) I think I went back later to actually

burn the clothes. By the time I returned to the holding cell, Mr. (b)(6) was outside the building. He was still on the concrete. That's when I assisted Lance Corporal (b)(6) in carrying him into the cell. Lance Corporal (b)(6) was tired at that point because (b)(6) had weighed so much. So I grabbed (b)(6) under the armpits. Lance Corporal grabbed the feet. We picked him up and put him in the front of the cell. His feet were about a foot from the entrance of the cell. When I say "the cell," I am referring to the exercise yard.

When we picked up (b)(6) he didn't react in any way. His head was limp leaning forward. He wasn't saying anything. At this point, he is naked and covered with feces. A couple of the prisoners cleaned him. I went into the cell where we had removed (b)(6) and supervised two other prisoners cleaning that cell. I didn't go back out to check on (b)(6). I did see (b)(6) after he had been cleaned. I did not observe any bruising on his body. I didn't observe any injuries on his body. If he would have had serious bruises, I think I would have seen them.

I do recall an alert at the camp on 5 June. Once the alert was sounded, I saw every Marine that worked with the EPWs, including Sergeant Pittman. I don't recall what Sergeant Pittman was doing at that time.

While I was involved in the stripping and subsequent movement of (b)(6) Major Paulus was giving us direction. He was the OIC of the detention facility at that time.

I knew when (b)(6) arrived. I didn't recall seeing (b)(6) be removed from the HMMWV. I assume Sergeant (b)(6) was involved in the strip search of (b)(6). Sergeant (b)(6) was my shift leader and was one of the Marines who conducted strip searches. (b)(6) arrived during our shift. I didn't actually witness the strip search.

Staff Sergeant (b)(6) was the SNCOIC of the detention facility. I don't know if he ever provided any guidance on the requirement to stand detainees up or keep them standing during the night on the first night. I didn't get instruction, but I don't know what actually specified that instruction to us. It's possible Staff Sergeant (b)(6) gave us instruction. I just don't remember. We were never told how to keep the EPWs standing, just that we had to keep them standing. We were never told we could kick them or strike them in any way. It was understood that we would not kick or strike them to keep them on their feet. We used goom to tell them to stand. If they didn't stand, we would physically lift them up. In most cases, most Marines would just

let them lay on the floor if they didn't get up.

The court-martial recessed at 1206, 27 August 2004.

The court-martial was called to order at 0830, 30 August 2004.

Mr. (b)(6), a civilian, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6). I currently reside in (b)(6).
(b)(6) I was a Sergeant in the United States Marine Corps Reserve. I was medically retired because I had brain cancer. Before I was medically retired, I deployed in support of Operation Iraqi Freedom. Prior to that, I served a period of active duty from May 6, 1996 to May 5, 2002. During the time that I served on active duty, I filed for conscientious objector status in May of 1999. I did that because I didn't believe what I was doing as a volunteer going against and trying to kill conscripts was right. After September 11, my views didn't change. My view towards Operation Iraqi Freedom is that I was torn. Something had to happen, but I'm not sure what. I did believe that was a just war. When I filed for conscientious objector status, my application was disapproved.

During my involvement in Operation Iraqi Freedom, my MOS was 2671, cryptologic linguist, Arabic. I was deployed with I MEF in support of OIF. They wanted me for a translator. At some point I ended up at the Camp Whitehorse detention facility. I believe the first day I worked out there was 4 June 2003. I did not stay the night there. I actually went back to the S-2 for 2/25 and then returned the next day and stayed from then on. When I started working at the detention facility, my purpose there was to serve primarily as a translator. Major Paulus requested me to come there. I worked at the detention facility I think for about three weeks.

During that period of time that I worked at the detention facility, I did observe Sergeant Pittman strike one of the detainees at the detention facility. The first instance happened on the night of the 5th. I observed a knee to the stomach and a kick to the outside of the knee on the leg. This was something that Sergeant Pittman did to a detainee. This occurred during the inprocessing phase when the prisoners are first received into the camp. The prisoner was standing there when I saw Sergeant Pittman

knee him. He wasn't resisting Sergeant Pitman as far as I could tell. It was just a knee straight up into the stomach region. I don't remember what the detainee was doing with his arms at the time. The detainee was clothed. The detainee's reaction when he received the knee was to double over in pain.

I also saw a kick to the outside of the knee. It was like what's called a mule kick where you kick back a little bit. The EPWs then fell down at that point. I believe Lance Corporal (b)(6) was also there when I saw this happen. I saw Lance Corporal (b)(6) strike this EPW in the same way. Lance Corporal (b)(6) did one or two strikes. When Lance Corporal (b)(6) struck the EPW, he went right to the ground. During this entire evolution with this EPW, I didn't see the EPW resisting these Marines in any way or fighting the Marines.

This EPW wasn't very big. He was smaller than I am. I'm (b)(6). I would say he was probably (b)(6) weighed about 140.

There was another occasion where I saw Sergeant Pitman strike the detainee or EPW in the facility. A (b)(6) was brought in from another of the villages in the area and at first he was given special privileges.

The civilian counsel objected to the last question. The military judge sustained the objection.

Questions by the prosecution continued:

I have no knowledge as to how this (b)(6) became a prisoner. I believe he was a (b)(6) because that's what I was told when he arrived. He was also wearing additional Muslim cleric garb. I was acting as a translator for the (b)(6). The (b)(6) was brought down for inprocessing and at that point he was strip searched by Lance Corporal (b)(6) and Sergeant Pittman and given the same blows that I described earlier. I saw Sergeant Pittman give the sheik a knee to the stomach. The (b)(6) reaction was to double over in pain. The sheik wasn't resisting Sergeant Pittman at any time. That was the only blow I saw Sergeant Pittman give the sheik.

I saw Lance Corporal (b)(6) give the (b)(6) a kick to the knee and another knee to the stomach. The (b)(6) was already doubled over. He just kind of crouched down and then the kick to the outside of the knee put him on the ground. As far as Lance Corporal (b)(6) blows to the (b)(6) the (b)(6) wasn't resisting Lance Corporal (b)(6) in any way or wrestling with Lance Corporal (b)(6) in any way.

At the cell where the (b)(6) was, there was one end of a barracks

with concertina wire all around with approximately a 10-foot gap between the door and the concertina wire on the interior. The sheik was inside the concertina wire with Sergeant Pittman and Lance Corporal (b)(6) and I was in the area outside the concertina wire.

I had been at the camp three or four days at the time that incident occurred. These blows being administered by Sergeant Pittman and Lance Corporal (b)(6) lasted about three to four minutes. Other than the one detainee that I saw and the sheik, I didn't see Sergeant Pittman strike anybody else.

I do know Sergeant (b)(6). He was another of the sergeants assigned to the camp. I did see Sergeant (b)(6) strike an EPW in the presence of (b)(6) and Pittman. This is one of the incidents that I previously described, the indoctrination phase. It wasn't the sheik. It was the other guy. I saw Sergeant (b)(6) do the knees to the stomach and the kicks to the outside of the legs in the same manner.

After I observed these two incidents, I did confront Sergeant Pittman about what I saw. We were in the barracks, our part of the barracks where we were sleeping. It was in the middle of the afternoon. I brought up to him that it was a violation of the Geneva Convention to strike a prisoner. We discussed it after that. I don't remember my exact words, but it was to the effect that, to the best of my knowledge, the Geneva Convention forbids the mistreatment of prisoners. I was confronting him with what I thought was mistreatment. His response was it was necessary in order to keep the prisoners in line. He said it was necessary to keep them in line because some of the prisoners had been recalcitrant in their behavior. So they just worked them over when they came into the camp to avoid any future problems with them. I did ask him why they would need to be worked over. They need to make sure the prisoners were compliant with all orders. These prisoners that I saw Sergeant Pittman strike, it didn't appear to me that they were not being cooperative with the orders. The prisoners were being cooperative with orders as far as the language barrier would allow.

During this conversation with Sergeant Pittman, his past
(b)(6)

When the sheik first came in, he was not held where the other prisoners were held. He was put off to the side. When I was up there, I was up there with Major Paulus talking to him making sure he was comfortable, making sure he had everything he needed, basically just making him feel very comfortable with being incarcerated. About two or three hours after he came in, we were given an order to in-process him like any other prisoner, and so Lance Corporal (b)(6) and Sergeant Pittman indoc'd him just like every other prisoner, but he was kept by himself in the one room. All the other prisoners were in the other detention area.

CROSS-EXAMINATION

Questions by the civilian counsel:

I filed my conscientious objector status during my original six-year enlistment. I did six years in active duty and two in the IRR. I file for my conscientious objector status in May of 1999. In order to file for that conscientious objector status, I had to declare that it was my personal belief that I was against all war of any kind and I was against the use of force and violence in war. When I filed that, those were my beliefs. Upon filing that, I was transferred out of my billet that I held at that point and put into one that was more administrative in nature so that I wouldn't be in a situation where I might have to use force or do anything that might be against my beliefs. I was upset when it was denied, and surprised. That didn't upset me. I had been expecting it.

I got off of Marine Corps active duty in May of 2002. My six years were up and I was out in May of 2002. I hadn't made any change in my request to go to a different billet between September 11 of that year or the year before I got out. The billet I was actually given was as a MIMMS, but it was maintaining and deploying tactical electronic warfare.

I got off of active duty and went into the civilian world. I was activated to go back on active duty as part of the IRR. That was pretty upsetting to me. That bothered me that that was taking place because it was a major disruption in my life to be called back.

I was called back in March of 2003. I then reported for Operation Iraqi Freedom. When I reported for OIF, I was initially involved in other activities with 2/25. I worked somewhere previous to going to the detention facility. At some point, I was transferred to the detention facility. I believe June 4 was the first day I worked out there. June 5, after I had gone back to the command

post, I brought all my gear back with me and started staying out there and working a shift as a guard.

On June 4, I stood a watch. Previous to that, I had never handled or had been around detainees or anybody else. There were 27 or 28 detainees there at that point in time. I was aware that these weren't POWs for the most part; a lot of them were criminals, murderers, rapists, and things of that nature. They were potentially pretty violent. I stood a shift on the very first day I showed up. I didn't receive any orientation from anybody regarding what I was supposed to do and what my duties were at that point in time. An officer didn't come up and tell me what my duties were. A SNCO didn't come up and tell me what my duties were. I had no experience. I'm now working as a guard at Camp Whitehorse. The 5th was the first day that I actually stayed overnight. I spent a total of about three weeks at the detention facility during my entire stay at Camp Whitehorse. During that entire time I was there as a translator, my job was to translate for everybody who came in. During the time I was there, I indicated previously in a deposition that I only saw three to five people come in and be strip searched. I wasn't there for any of the other people that might have been brought into that facility for the three weeks I was there except maybe three to five.

I testified about seeing the sheik. I didn't spend my entire time with the sheik. I indicated that I saw him get strip searched and that these blows were administered while he was strip searched by Sergeant Pittman and Lance Corporal (b)(6). This strip search took place inside the detention area. He wasn't strip searched outside where everyone else was strip searched. He was strip searched inside. I was about 20 feet away from there. That's when I saw these blows.

I remember talking to you in a telephonic interview on August 9. I don't recall saying that I was just walking through there, that I didn't know why I was there, that I didn't know whether I was supposed to interpret for someone, that I could not remember why I was there. I was called to interpret for the sheik.

I'm testifying today under a grant of immunity. When I saw this happen, Major Paulus was not on site. I didn't indicate to anybody, Hey, he just got hit or kicked. I didn't go report it to my OIC. I didn't report it to Major (b)(6). I do not remember seeing Major (b)(6) there.

When this (b)(6) was put into that room, that was actually the room where (b)(6) had just been in. I remember (b)(6) being removed from that particular cell. In fact, I was there for that.

I actually witnessed him being dragged out. I attempted to talk to (b)(6) during that period of time. He didn't talk back to me at that point. At some point he talked to me.

I had actually seen (b)(6) previously to that dragging incident which happened on 5 June. I recall a threat of protesters coming to the facility. I testified previously that I thought that was the next day. It's my understanding that the protesters that were coming to get the (b)(6) happened the day after the 5th, I believe. The (b)(6) was in the cell, and I indicated he's being strip searched in the cell. I didn't see Major (b)(6) in the cell at the time.

Previous to the sheik being put in there, I saw (b)(6) being dragged out by Lance Corporal (b)(6). Lance Corporal (b)(6) was there. I don't remember Lance Corporal (b)(6) being there. Staff Sergeant (b)(6) was there. But I don't remember seeing Major (b)(6). Everyone's around there at that time that (b)(6) is taken out.

The (b)(6) isn't put in the cell immediately upon (b)(6) being taken out. The room was cleaned before the sheik was put in there. I was there for some of the cleaning.

I was also talking to (b)(6) at that point. (b)(6) did not indicate to me that he was in any pain. He did not point to his ribs or anything else or his neck or anything. I didn't have a long conversation with him. He would not reply. I attempted to communicate with him, but he did not reply. I attempted to speak to (b)(6) after he was dragged out, but I got no response. That was before the sheik was placed in there. I talked to (b)(6) previous to that. He was out in the holding pens on the other side of the prison. That would have been earlier that same day. I didn't have a conversation with him then. I offered him water and he took it. He asked for water and then he asked to go back into the cell in Arabic. When I put him back in the cell that morning, it wasn't just me putting him in the cell. I had some help from Lance Corporal (b)(6). He was laying down at the time. He drank the water. Me and (b)(6) picked him up. He came up slowly and he walked into the cell under his own power.

The next time I saw him was just before he was being dragged out. I was there because I had been asked to come over there and work with the other prisoners to get them to clean the cell and try to get (b)(6) to get up and clean himself. When I first got there, (b)(6) was laying on the floor. He had just defecated on himself and the floor. He was the only prisoner in that particular holding area. Staff Sergeant (b)(6) and Lance

Corporal (b)(6) were there. I know there were some others around, but I do not remember who they were. I can't recall any officers being there. I did see an officer that afternoon, but I do not remember what time.

The first night I was there, June 5, I saw a strip search done at night, late evening. It wasn't the sheik. It was someone else. They used to keep a log there at that facility at times. When a new EPW would come in on the 5th or 4th or whatever day it was, they would log in when they came in.

I recall this strip search I testified to before, the first one I described. I indicated that occurred at night on the 5th, the same day the (b)(6) arrived. That would have been June 5, 2003. I indicated it was at night. I don't remember who that detainee was, but I was called there to interpret. He was wearing a robe. I don't know his name. I don't know what the circumstances of his capture were. I was there to give commands. I told him to take his clothes off. I recall that specifically. He took off all but his undergarment. He took off a robe and a shirt and a pair of pants. He didn't have any contraband on him. That whole scenario was just a few minutes. During that time, he wasn't flex cuffed for the full search. At some point, the flex cuffs were taken off. I don't remember who took them off. I don't remember who recuffed him when he was done. I don't remember who put the hood on him or took it off. I believe he was taken to the other cell that (b)(6) was not using, but I'm not sure. It isn't true to say that I'm confused about what I saw versus what I heard later at Camp Whitehorse.

The next person I indicated was the sheik. I'm not sure if these both happened the same day. I indicated they happened the same day. I think I saw the sheik get strip searched sometime in the evening, but I'm not sure.

I saw (b)(6) again later in the evening of the 5th after the dragging incident when I attempted to talk to him, but he did not communicate with me. I later saw him in the reck yard close to midnight. At that time, I came up and told him to be quiet.

The first time I talked to him, which would have been the morning of the 5th, he drank water. He didn't have any difficulty drinking water. My initial impression of (b)(6) was that he was trying to make things difficult for me. When I would see him lying on the ground, he would be kind of looking around and when I would look at him, he would close his eyes or look away real quickly. I kind of thought he was acting deceptive.

After the first time I saw him that morning, I gave him the water and helped him up. When he went into the cell, he flopped down right on the floor. When I talked to him at that time, that entire conversation was in Arabic. At that point, I thought he was in pretty good physical condition, just kind of acting a little bit recalcitrant, kind of obstinate. I based that as well on the fact that when I saw him lying there, when I would look at him, he would close his eyes and try to act as if he wasn't looking at anything. I don't recall any other memory of (b)(6) during that shift that I was working.

I worked with a shift of Marines for the three weeks at Camp Whitehorse as a guard. I also worked as an interpreter. I was there for three weeks with the same Marines on my shift. I only remember Lance Corporal (b)(6) and Corporal (b)(6) who were on my shift. I'm not absolutely certain who was on my shift. When you talked to me previously about that, I didn't know who I served with for that three weeks.

When I was called to the cell the second time that day to see (b)(6) that was because of the defecation. When I went into that cell, there was diarrhea. There was evidence of feces around the area. I didn't see (b)(6) throw himself on the ground. I didn't see him fall into the concertina wire. I didn't see him in the head. When I first got there, he wasn't naked. A couple of Marines took his clothes off. I don't remember who did. That was because there was really no hope of cleaning those clothes. I do not remember if Major Paulus was there at that point in time. Staff Sergeant (b)(6) was there. I don't remember if Major Froeder was there.

The next thing that I saw was Lance Corporal (b)(6) dragging (b)(6) out of there. I didn't stop that procedure, and I didn't object to that procedure. Lance Corporal (b)(6) was ordered to take him out of there by, I believe, Staff Sergeant (b)(6).

I have indicated that I am suffering from a pretty grave illness at this point. I was actually experiencing symptoms from that illness while at Camp Whitehorse. I noticed some physical ailments that they were eventually able to diagnose as far as my current condition. That was a very difficult time for me because I didn't understand what was going on with my body during that period of time I was at Camp Whitehorse. Then I had a biopsy performed in July of 2003, shortly after coming out of Camp Whitehorse. That's when I had my diagnosis. Part of the difficulties that I experienced in the course of my treatment and what is a part of my condition is short-term memory loss. The

other problems that I have, of course, is I'm having to face a very serious situation in my life. This has been traumatic for me. In addition to having to deal with that, I have experienced nightmares from my service in Iraq.

I'm married. My wife has been diagnosed with traumatic stress disorder. That's from her service in the Army.

Back when I saw (b)(6) being taken out of the cell out to the reck yard, he was dragged between 30 and 40 feet. When he was being dragged, his body was being dragged along the deck. There is about an 18-inch drop off there in the back of the facility between the reck yard and the cell he was in. He was dragged down that and out to the reck yard. At no time during the searches that I described and/or this dragging incident with (b)(6), I never said, "Hey, stop. Stop it now."

At the time I saw the dragging of (b)(6), he was dead weight. While he was out in the reck yard after he was dragged out, Doc (b)(6) showed up and checked him out. I was present for that. I was probably about ten feet away. I wasn't asked to interpret as Doc (b)(6) was checking him out. I don't remember if Major Paulus or Major (b)(6) were there at that point in time. When I later saw (b)(6) that evening around 2330, I didn't call a corpsman for him. He had already seen a doc and he appeared okay to me.

When the sheik arrived, I wasn't with him the entire time. I had times when I was off shift or I might be playing chess or doing something else. I didn't interpret for the sheik when he was in the outer building. I didn't see the inprocessing of (b)(6). I didn't receive any instruction on indoc'ing or handling of EPWs.

I testified today that I saw the sheik get a knee to the stomach of some kind and a kick to the outer knee, which I described as a mule kick. I recall testifying in a deposition to this matter. I testified that the only thing that I can kind of remember is the knee to the stomach region. My memory has actually gotten better since that time. I attribute my memory getting better to the shrinking of the brain tumor. That has increased my memory and my ability to recall.

At some point, I went to Staff Sergeant (b)(6) and told him this inprocessing is wrong and we needed to change it. I did that after the first time I saw it, which would have been before the (b)(6). I don't recall when the (b)(6) came in. I remember the (b)(6) incident happening where he's dragged out. I believe I recall the (b)(6) actually being the next day, which would have been the 6th. The incident with the protesters coming was the

next day after the (b)(6) was brought in. I went to Staff Sergeant (b)(6) immediately after the prisoners were processed and put into the cell.

During my conversations with (b)(6), he never indicated to me he was hurt in any fashion. During the cleaning up process when (b)(6) was being dragged out, I didn't talk with (b)(6). I talked to him before that. I was trying to get him to stand up and clean himself. He wouldn't do that. When I was doing that, he was laying down. At no time did he try to get up. At no time did I see him go into the concertina wire.

I've indicated that at some point I had a conversation with Sergeant Pittman. This was the next day. It was during the day after the first time I saw the indoctrination. It was the day after the 5th, so that would have been the 6th. I didn't really keep track of dates out there. Time kind of just ran its own cycle out there. This conversation with Sergeant Pittman, I indicated that I thought they were violations of the Geneva Convention. This debate I had with Sergeant Pittman was more of a philosophical debate. Philosophical debates always have ramifications in the real world. It was my understanding that in accordance with the Geneva Convention, you couldn't abuse any EPW or detainee in any way or any manner.

I recall testifying at my deposition on June 3, 2004. I recall saying it was my understanding that detainees cannot be hit in any manner by prison guards or guards at a detainee facility. That's my opinion based on what I remember being taught on the Geneva Convention.

(b)(6)

(b)(6) or some place like that. The substance of his conversation was when you have somebody that's a detainee or a prisoner who's just been captured, you have to make sure that they know that they can't escape and that they're going to have to follow orders and they're going to have to get their clothes off when we tell them to so we can strip search them. The detainees appeared reluctant to remove their clothes.

Detainees were compliant within the bounds of the language barrier. Even with me there as an interpreter, there was a language barrier. That's because regardless of how well you learn a language, it's hard to really apply that and use it correctly all the time. It's something you've got to stay current with. Even with an interpreter like myself there, the detainees wouldn't always be able to understand me; and I wouldn't always be able to understand them.

My understanding of the Geneva Convention was what I learned at boot camp. I hadn't taken any courses in that. I hadn't studied it independently in my request to become a conscientious objector.

REDIRECT EXAMINATION

Questions by the prosecution:

I have heard the term "necessary force," which means the use of force as needed to complete a mission. It applies in different circumstances in different ways.

What I observed Sergeant Pittman and Lance Corporal (b)(6) do to those two prisoners, it's not opinion that that was necessary force. It was excessive.

At the time that I observed (b)(6) I had no knowledge whatsoever whether he had been kicked, punched, or hit in any way. I gave a written statement to NCIS about a week and a half after the incident I observed regarding Sergeant Pittman. I don't recall if I mentioned these incidents to NCIS when I spoke to them. There isn't anything that could potentially refresh my recollection as to that.

After I gave those statements to NCIS, the next time someone spoke to me about these events was probably another week or so. After I left Iraq, the next time someone spoke to me about these events was, I believe, when the government contacted me, which I believe was May of this year, right before my deposition. I had mentioned that I had some difficulty remembering dates and times. I'm sure about what I saw Sergeant Pittman do to those two detainees as I have described.

RECROSS-EXAMINATION

Questions by the civilian counsel:

I have indicated that this was unnecessary force in my opinion. I was a sergeant. I had very strong beliefs about the use of force. I didn't stop it. I didn't go immediately to Major Paulus or anybody else and say it isn't right.

Insofar as my function there, I indicate the entire time I was there I was involved in three or so strip searches. My function wasn't to get the clothes off these people. My function wasn't to lift up their genitals and take a look. My function wasn't to get their legs spread. My function wasn't to get them bent over. My function wasn't to open their mouth and see if there was any

contraband in there. I didn't have to put my hands on any of them.

I recall talking to NCIS. I don't believe I mentioned the sheik in my statement to NCIS. The blows that I described that I indicated weren't necessary, they weren't given when an EPW would not do what they were asked to do. I recall talking to NCIS on 26 June and telling them that it was done to get the EPWs to comply with commands given to them by Marines.

REDIRECT EXAMINATION

Questions by the prosecution:

During these two incidents that I saw Sergeant Pittman striking the two detainees and the other individual, during the time that Sergeant Pittman delivered those strikes, it didn't appear to me that those detainees were not complying. They were complying to the best of their ability to understand what was being told to them.

EXAMINATION BY THE COURT

Questions by the military judge:

I said that around 2330 on the 5th, I saw (b)(6) in the recreation area. I had tried to talk to him. He was moaning, and the other guards who were on duty at the time asked me to ask him to be quiet. They had been talking to him in English and he hadn't been responding. So the guards thought he might respond if I spoke to him in Arabic. They asked me to ask him to stop moaning. He didn't respond to me when I asked him that. He didn't stop moaning. After I asked him to stop moaning and he kept moaning, I went back to bed.

The indoctrination beatings and abuse were to make sure that there were no problems later on. It was not to obtain compliance at that point, but to ensure compliance in the future. In other words, these blows were given in order to establish who was in charge and to ensure the prisoners would comply with orders later on. I did not consider that appropriate and necessary. When these blows were struck to the sheik and to this other individual, they weren't necessarily being asked to do anything at that particular time. There were times they were being asked to take their clothes off; there were also times they were just being hit to be hit.

Just before the knee to the stomach and the mule kick to the knee,

they weren't being asked to do anything. I could not discern any purpose in the use of those blows. I do not remember if either individual's hands were handcuffed.

I also indicated I talked to Staff Sergeant (b)(6) about the indoctrination that was being used. I told him that I did not believe it was right to do this to people. When I say "it wasn't right," I'm referring to these blows that were being inflicted to ensure future performance. His response was "It works."

RECROSS-EXAMINATION

Questions by the civilian counsel:

My verbal statement to NCIS that was made on the 6th was that this was done to get the EPWs to comply with commands given to them by these Marines. By "these Marines," I'm referring to those Marines that had to strip search.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I am familiar with the terms "compliant" and "non-compliant." Compliant means to me that you're willing to do what someone wants you to do or tells you to do. Non-compliant means a refusal to do what someone else wants you to do or tells you to do. I would define the term "active resistance" as if you were to put up an arm or try to get someone off of you, push off, something along those lines, something where you're actually taking action to resist what's being done to you. "Passive resistance" means to me just laying on the floor, not really doing anything at all, not helping, not hindering, just forcing other people to do things to you and not even resisting them, not doing anything at all. Passive resistance would be essentially a person just laying there, not fighting, but not cooperating either.

I indicated that on a number of occasions, I attempted to communicate with (b)(6) and that he would not respond. The first time I spoke to him was out in the holding pen. He did respond a little bit, but most of what I was saying to him, he did not respond to. He did respond to some of it. The parts that he failed to respond to I would describe as passive resistance. I wasn't really sure if he understood me. At some point, I told him to do some things and he did do those. The next time he failed to respond to my attempts to communicate was after he defecated on himself. I would attribute it to passive resistance. From what I could read of his pattern of conduct, he did not want to assist us

in any way. I interpreted it as a further attempt to just basically blow us off. When I attempted to get him to quit moaning out in the recreation yard, I wouldn't characterize that as resistance. I don't know why he didn't respond to me. He made no noise at all in the barracks. In the exercise yard, he was moaning. At that point, I was physically tired and not able to follow up on it very well.

I did not observe any other detainees offering what I described as active resistance to the Marines at Camp Whitehorse. I did not observe any other detainees offer passive resistance to the Marines at Whitehorse.

I was never able to determine if (b)(6) could speak English or understand English. I don't remember if I ever asked him if he did.

Going back to the incident in the cell after (b)(6) had defecated on himself, I testified that he was dragged from the cell. One arm was under his chin and one was kind of cradling his head. He was dragged out by the head. His arms were dragging too. He wasn't attempting to resist being drug out of the cell. He wasn't attempting to assist the individual dragging him at all.

I am not familiar with something referred to as the fist and hand technique. I do know of detainees between the time they were brought in to the Camp Whitehorse Detention Facility and the time that HET met with them that were required to stay on their feet or stay awake. They were flex cuffed and had the sandbags put over their heads and were required to stand until whenever the HET showed up. If a prisoner or detainee would not stand, they would be yelled at until they stood up. I never saw them struck or in anyway hit in order to get them to stand. I don't remember if I guarded prisoners between the time they were brought in and the time they were seen by HET.

Besides Sergeant Pittman and Lance Corporal (b)(6) I also indicated one other individual I saw, a sergeant, strike prisoners. I didn't see anyone else. Just those three. When I saw these prisoners struck, I do know that Staff Sergeant (b)(6) was present at the time. He was in a position to have observed it on both. I do not remember in relation to me where he was standing.

During my duties as a guard there at Camp Whitehorse, I acted as an interpreter as well. The other prisoners knew I could speak Arabic. I talked to them several times a day. None of them ever indicated to me that they were being abused or mistreated. None of them ever complained about their treatment. (b)(6) never

complained about his treatment.

I indicated that I thought some of his conduct was attributable to some kind of passive resistance. I did not notice this passive resistance from any other prisoner or detainee.

I never saw (b)(6) being struck. After the dragging incident, I was within five feet from him in the reck yard. This was when I spoke to him to get him to be quiet. I wasn't able to hear his breathing at all. I indicated he was moaning. I didn't observe any injuries to him at that point. The lighting at that point was not very good.

On the morning of the 5th, when me and (b)(6) assisted (b)(6) back into the cell from the holding pen, I did not notice any injuries to (b)(6) at that point. He didn't seem to be having any difficulty breathing. I didn't hear any wheezing or anything like that. I never participated or observed any of the interviews conducted by HET.

I indicated I am testifying under a grant of immunity. I do not know if it's testimonial immunity, but I would have testified anyway even without the grant because I believe the truth needed to be heard or at least the truth that I saw. I have no apprehension as I sit here today that I could still be prosecuted for any offense based on any of my conduct in Iraq because my conduct wasn't perfect, but I did not do anything actively wrong in Iraq. I believe I was given a grant of immunity to ensure that I would testify truthfully.

RECROSS-EXAMINATION

Questions by the civilian counsel:

I indicated in response to one of the questions that I hadn't actually sat in on a HET interview, but I did talk to HET after (b)(6) had been there.

Corporal (b)(6) U.S. Marine Corps, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Corporal (b)(6). My current unit is 2d Battalion, 25th Marines. My city and state of residence is

Brooklyn, New York.

I deployed with 2/25 in support of Operation Iraqi Freedom. When I was there, I was assigned near Nasiriyah, Iraq. On 3 June 2003, I was involved in the capture of an individual by the name of

(b)(6) After the capture of (b)(6) I was there during the unloading of EPWs that were captured during that patrol. I was in one of the HMMWVs that delivered the detainees to Camp Whitehorse. (b)(6) was not in my HMMWV. An EPW was in my HMMWV, but I'm not sure what his name was.

I observed that EPW being offloaded from the HMMWV. The EPW was flex cuffed, sandbagged, and sitting on the floor of the HMMWV and it was time for offloading. Sergeant Pittman came to offload him. He told him "let's go." He listened, but I guess he didn't want to get off. So Sergeant Pittman pulled him off and he fell. I saw Sergeant Pittman pull him off. Sergeant Pittman pulled him off by his legs and he fell on his bottom. This was a regular size HMMWV. So the EPW fell a couple of feet.

There was an occasion where I saw Sergeant Pittman offload a prisoner in a similar fashion. I can't remember the exact date. I can't give you an exact date when we started bringing EPWs to Whitehorse. I arrived in Iraq in March or April. The EPW wasn't cooperative, so Sergeant Pittman and another Marine pulled him off in the same fashion. He hit his butt on the deck, and then they just walked him off through the barbed wire fence. I believe the prisoner was flex cuffed. I can't remember if he had a sandbag on his head. The physical characteristics of this other guard was that he was Caucasian and he was bigger than I was and a little muscular. He could have been 6 feet tall, but I'm not sure.

They would grab the ankle or the calf of the prisoner. I can't remember. The other Marine is grabbing around the same area. The EPW was sitting and then slid and fell down and hit his bottom.

I said the EPW wasn't being cooperative. I've forgot what the Arabic word for come on and let's go and stuff like that is, but the EPW wasn't wanting to go. He was a little resistance, not really anything major like a fight. So Sergeant Pittman pulled him off and unloaded him. The EPW wasn't kicking, but you can feel if someone's resisting, not wanting to be moved.

All I remember is Sergeant Pittman grabbing (b)(6) leg. He wasn't cooperative. He didn't want to go. I guess you can consider that resisting. He didn't kick or anything like that.

These two occasions with these two EPWs, when the HMMWVs are

brought up to Camp Whitehorse for the prisoners to be offloaded, the guards would yell at the EPWs so that they can understand what you want to happen. I can't remember if there was an interpreter present for either occasion.

CROSS-EXAMINATION

Questions by the defense:

I did not observe the detainee in any kind of pain after he was unloaded off the HMMWV. He wasn't limping or anything. I don't know how long the offloading actually took place, but it wasn't a slow process. I would agree with you that they were moving in a military manner. I had an opportunity to observe Sergeant Pittman when he removed this detainee from the back of the HMMWV on the night that (b)(6) was brought in. I observed the manner in which he removed this detainee. I can't remember if Sergeant Pittman said anything to me before he removed the detainee from the HMMWV. He spoke in Arabic to the detainee. The detainee wasn't responding to Sergeant Pittman's commands in Arabic.

The second incident where I saw Sergeant Pittman unloading detainees from the back of the HMMWV, on that occasion, the detainee didn't respond to Sergeant Pittman's commands in Arabic. Sergeant Pittman grabbed him after he gave him these commands in Arabic. The detainee didn't appear to be in any kind of physical pain after he was removed from the HMMWV.

On that first occasion when (b)(6) was removed from the HMMWV, it was my recollection that he had a sandbag on.

REDIRECT EXAMINATION

Questions by the prosecution:

I know Sergeant Pittman because we went through the Reserve station in (b)(6)

EXAMINATION BY THE COURT

Questions by the military judge:

I indicated there were two incidents, the first was when (b)(6) was brought into the Camp Whitehorse facility. On that incident, I indicated that the detainee was sandbagged, meaning he was blindfolded. He was also flex cuffed. His hands were flex cuffed in back of him. He was sitting on the floor of the HMMWV and he was told to get out. I can't remember if anyone attempted to

guide him in an effort to have him get out of the HMMWV. I can't remember if Sergeant Pittman or the other individual who assisted Sergeant Pittman tried to show him where the exit of the HMMWV was. I figured he might have been able to know how to get out of the HMMWV with the sandbag on his head if someone did not show him since when they're loaded on the HMMWV, they're not sandbagged. They get sandbagged when they're on the HMMWV. We load him on the HMMWV and then put the sandbag on his head.

The second individual I talked about, that incident happened before the (b)(6) incident. I can't remember when this individual was in the HMMWV, if he was sandbagged or not sandbagged. I said he was flex cuffed. His hands were behind him. I don't recall if anyone assisted him or attempted to show him how to get off the HMMWV.

REDIRECT EXAMINATION

Questions by the prosecution:

I was involved with more than two captured prisoners in Iraq. It was SOP that typically prisoners would have sandbags placed on their heads before they were transported to the detention facility.

RECROSS-EXAMINATION

Questions by the defense:

It was standard to have detainees offloaded from the HMMWVs in the manner I observed Sergeant Pittman on these two occasions I just testified about because they have to come off. I can't recall if there were any SNCOs present on that first occasion when the detainees were off loaded from the HMMWV by Sergeant Pittman. When we had detainees dropped off at Camp Whitehorse, the only time I could remember that SNCOs were present was the (b)(6) incident, and that was Staff Sergeant (b)(6). Other than that, I wouldn't be able to tell you.

Lance Corporal (b)(6) U.S. Marine Corps Reserve, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Lance Corporal (b)(6) I am currently a lance corporal

in the United States Marine Corps Reserve. I am assigned to 2d Battalion, 25th Marines, in Garden City, New York.

I was deployed to Operation Iraqi Freedom from 3 June to 6 June 2003. I worked as a guard at the EPW detaining facility at Camp Whitehorse. During that time period, I did guard an EPW by the name of (b)(6). The guard shift that I worked on, there were two other Marines that worked with me, a Corporal (b)(6) and Lance Corporal (b)(6). Corporal (b)(6) was the NCO in charge of that guard detail.

I do not remember guarding (b)(6) on 3 June 2003. The first time I guarded (b)(6) was the next morning. The first thing that I saw was when he was brought into the building. He was able to walk a little bit and Corporal (b)(6) was like lifting him up a little bit and guided him through the building. I don't remember if he was having any problems breathing at the time. He didn't appear to be in any kind of pain. Corporal (b)(6) was holding (b)(6) arm and it looked like he was lifting him up a little bit and walked him through the holding building.

The next time I guarded (b)(6) was the next day between noon and 6 p.m. I don't remember what (b)(6) condition was at that time. He was sleeping the whole time. He wasn't making any noises at all. I don't remember if he appeared to have trouble breathing.

The next time I saw (b)(6) was the next day, I think the 5th, at midnight. I didn't see him doing anything at all that day. I came off my shift. Then ten minutes later, he was found dead by Lance Corporal (b)(6). (b)(6) was outside of the building in one of the cages in the reck yard. He wasn't wearing any clothes. I was about ten feet away from him when I observed him.

The first time I saw (b)(6) when Corporal (b)(6) brought him into the holding pen, Corporal (b)(6) was holding him by the arms and lifted him a little bit to help him walk into the building. Once (b)(6) got back into the building, he laid down on the floor. I didn't observe him having any difficulty breathing. He wasn't making any noises at the time. He wasn't doing anything at all. I think he was sleeping.

At no point while I was a guard from 3 to 6 June did I observe any guard hit, punch, or kick (b)(6).

Lance Corporal (b)(6) U.S. Marine Corps Reserve, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Lance Corporal (b)(6) I am presently in the United States Marine Corps Reserve. I'm assigned to 2d Battalion, 25th Marines, in (b)(6) My current place of residence is (b)(6)

On 3 to 6 June 2003, I was a guard at the Camp Whitehorse Detention Facility. Lance Corporal (b)(6) Corporal (b)(6) were the other Marines on my guard shift. Corporal (b)(6) was the senior NCO on my shift.

I remember an EPW by the name of (b)(6) The first time I guarded (b)(6) was on the morning of June 3 at around 0800. My first guard shift was the day after he arrived. The first time I observed (b)(6) he was standing up in the outside holding pen. He was with other EPWs. He was a little weak, but I really didn't get a chance to look at him. He looked a little sick. When he was standing, he was flex cuffed and I believe the sandbag was still on him.

The next time I saw (b)(6) was the next day. The guard shift I had that day was from 12 to 16. (b)(6) was inside his cell. He was laying down on the floor. I didn't go up and check on him that day.

The next time I saw (b)(6) was the following night at 1200. (b)(6) was down, soon to be deceased. He was laying out in the outside pen, the recreation yard. (b)(6) was by himself. I believe he was naked. I didn't observe anything else about (b)(6) at that time. When I was roving around, I noticed he wasn't moving. Myself and Corporal (b)(6) checked on him. We went inside the cage and tried to nudge him to see if he moved. There was no response. Corporal (b)(6) told me to go call Staff Sergeant (b)(6) Corporal (b)(6) just stood there by the body. I left before he did anything else. That was the last time I saw (b)(6) during that time period.

I never hit, punched, or kicked (b)(6) I never observed any other members of my guard shift hit, punch, or kick (b)(6)

CROSS-EXAMINATION

Questions by the civilian counsel:

The first time I saw (b)(6) was the morning shift, the day after he came in. I thought he looked sick. I can't remember if he had the sandbag on at the time, but I know he had the flex cuffs. He looked tired. I didn't see any vomiting, diarrhea, or anything like that. He just looked like all the others that came in there. That wasn't unusual if someone had been up or down all night that they'd be a little fatigued in the morning. I didn't think anything unusual about that.

During my shift, (b)(6) was fed and he did eat. He was given access to water. No trouble drinking water or eating food. When I would see him laying down, he didn't seem to be favoring any body parts or appear to be in any pain.

EXAMINATION BY THE COURT

Questions by the military judge:

I said he drank water on our first shift. I thought that was the 3 June. In any event, it was the day after he arrived. He was far in the back of the holding pen when he had water. He was inside the building. When he drank the water, I believe he was sitting down or laying down. He wasn't flex cuffed at the time. I said he ate as well. We gave them food and then they fed themselves. They ate it right there inside the building. I saw him eat the meal I gave him. He wasn't there by himself. Two other prisoners were with him, the (b)(6)

This building had concertina wire around the inside perimeter. It was divided up into sections with concertina wire. I believe (b)(6) was in the same section as the two Slim Jim brothers.

Hospitalman Third Class (b)(6) U.S. Navy, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q Please state your full name.

A (b)(6)

Q And currently you are a Hospital Third class in the United States Navy?
A Yes, sir.

Q What is your current unit?
A Attached to naval hospital Jacksonville, Florida, sir.

Q I see that you are unshaven today. Can you explain why that is?
A I am under a 30-day program for a skin disease on my face right now.

Q What is your billet?
A 8404 corpsman, sir.

Q How long have you been a corpsman?
A Going on six years now, sir.

Q You deployed in support of Operation Iraqi Freedom? Is that correct?
A Yes, sir.

Q When you deployed in support of that operation, where were you assigned?
A Basically to An Nasiriyah, sir.

Q Were you ever assigned to Camp Whitehorse?
A Yes, sir.

Q What was your function at Camp Whitehorse?
A Health care provider for the Marines and prisoners at the camp, sir.

Q At the Camp Whitehorse detention facility?
A Yes, sir.

Q All right. In relation to where the detention facility was located, how far were you from that facility?
A Say about three quarters of a football field, sir.

Q Please describe what you had available there at that place that you were located as far as medical supplies?
A Basic supplies, sir, IV fluids, things of that nature, some medications. Nothing too extensive.

Q Did you have another corpsman working with you?
A Yes, sir.

Q That was who?

A Petty Officer (b)(6) sir.

Q Did you have any beds made up there at this particular place that you were located?

A Makeshift stretcher boards and stuff, sir.

Q So you had stretchers?

A Yes, sir.

Q Did you have IVs?

A Yes, sir.

Q IV fluid bags?

A Yes, sir.

Q All right. I want to focus you in on a time period of three to 6 June 2003. Okay?

A Yes, sir.

Q During that period of time, did you ever have an occasion to examine a prisoner by the name of (b)(6)?

A Yes, sir.

Q When?

A Mid afternoon time, sir.

Q Can you recall which specific day it was?

A Not at this time, sir.

Q Was that the only time you examined (b)(6)?

A Yes, sir.

Q Please describe for me how it was that you actually examined (b)(6)?

A Basically, I was called over to the detention facility by one of the lance corporals over there. That was usually routine whenever something went down. One of us was called over there. So I went over there, saw Mr. (b)(6) out in the reck area. He was laying on the ground. I was asked to examine him pretty much, sir.

Q Who asked you to examine him?

A Major Paulus at the time, sir.

Q All right. So at the time you examined (b)(6) please describe for me what you are seeing. Not going into the examination itself yet, but what are you seeing

when you see (b)(6)?
A Basically, he was laying on the floor. He had two prisoners tending to him, cleaning him up.

Q Okay. On the floor inside or --
A On the ground.

Q He was outside?
A Yes, sir.

Q In one of the holding cells outside?
A It is actually -- there are two holding cells and a reck area. He was in the reck area, sir.

Q How is he laying?
A I believe he was on his back at the time.

Q What is he doing with his arms and legs?
A They were laying there and pretty much being managed by the other two prisoners that were cleaning him up.

Q Did there appear to be any tension in the legs or arms, or were they just limp?
A He wasn't really moving at the time, sir.

Q How about his eyes? What is he doing with his eyes at that time?
A As far as I can remember, they were closed.

Q How about his breathing? Did you notice at this time? Did it look normal?
A Not just looking at him. I had to do my examination to find out.

Q Is he clothed?
A No, sir.

Q So he is completely naked?
A Yes, sir.

Q You said there were two prisoners cleaning him. Why are they cleaning?
A As far as I was told, he had a bowel movement on himself. And he pretty much needed to be cleaned up because he couldn't do it himself.

Q He couldn't do it himself?
A As far as I know.

Q Well, did you see the actual defecation on him?
A By the time I reached there, the cell was washed down.
And he was outside already, sir.

Q Did you see any defecation on (b)(6)?
A They were pretty much done cleaning him by the time I
got there. They were almost finished.

Q Were you able to see the type of defecation?
A No, sir.

Q All right. So you see (b)(6) What happens next?
A Basically, I was told to examine him for anything, like
how he was breathing and things like that. I went
through my examination, checked him out. He wouldn't
answer to any kind of verbal commands or anything. So I
executed what is called a sternum rub. It is basically
taking your hand and rub it across the middle of a
person's chest to stimulate a person to wake up or
whatever.

Q You took basically the knuckles of your hand and rubbed
them across his sternum?
A Yes, sir.

Q And when that happened, what happened?
A Basically, he reached up towards me but he didn't grab
me. He made some kind of -- I am not sure what it was
he said -- but it was some kind of a couple of words.
And he just put his hands back down.

Q Did his eyes open at that point?
A I vaguely remember right now, sir, if he did or not.

Q How about the strength of his voice?
A It was pretty -- he wasn't yelling, but you could hear
him in a regular voice pretty much.

Q Okay. At that point after you did the sternum rub, what
happened next?
A Basically, I passed instructions to keep an eye on him.
If anything else happen, alert us; and we will take
further steps from there.

Q Who did you tell that to?
A It was told to Major Paulus and the guards there at the
prison.

Q Did you tell Major Paulus anything else?

A Besides that, probably not, sir.

Q Did they ask you what you thought might be wrong with him?

A I just gave them a pretty much quick assessment from what I found from the actual examination. He was still breathing. There wasn't any obvious trauma. To keep an eye on him just in case he went through this again, and we would probably administer some meds after that if there was anything.

Q At that time, did you have any information at all that he had been punched, kick, or kneed?

DC: Objection, Your Honor, hearsay.

MJ: Overruled.

THE WITNESS: No, sir.

Questions by the prosecution continued:

Q Did you examine (b)(6) again that day?

A No, sir.

Q When you left (b)(6) where was he?

A He was still in the reck area, sir.

Q Okay. In the same way as when you found him?

A I believe they were getting ready to take him back inside the cell before I left.

Q Did you actually see them take him inside the cell?

A No, sir.

Q Is that the last time you saw (b)(6)?

A Yes, sir.

Q You didn't examine him again later that day?

A No, sir.

Q Well, at that time when you examined him, what was your assessment?

A Basically, he still had productive breathing. He is obviously alert to stimulation. As I saw, there was no obvious bruising or any evident bleeding or anything like that. That is why I told them to keep an eye on

him to make sure it didn't happen again. If it did, we would take further measures.

Q Did you suspect heart attack or stroke or anything?
A At that time, sir, I didn't think of anything. I told them pretty much that could be the worst-case scenario. But at most, I didn't think it was that.

TC: That's all I have. Thank you.

MJ: Defense, cross?

DC: Yes, sir.

CROSS-EXAMINATION

Questions by the defense:

Q Afternoon, Petty Officer (b)(6)
A How you doing, sir.

Q I have a few questions for you. You are a corpsman?
A Yes, sir.

Q And in order to become a corpsman, you go to what is called an A school. Is that correct?
A Yes, sir.

Q Where is that A school?
A In Great Lakes, Illinois.

Q What kind of training did you receive at the A school?
A Basic nursing, assessments, patient care, sir, and meds administration.

Q How long is that school?
A Around 14 weeks, sir.

Q And you study anatomy?
A Yes, sir.

Q You study first aid?
A Yes, sir.

Q You study how to examine patients?
A Yes, sir.

Q And you learn how to detect illness and injury and

things of that nature?
A Yes, sir.

Q The primary focus of that training is for you to repair and stitch up otherwise healthy young men who have been shot or wounded. Correct?
A That would be in field meds service school, sir.

Q Okay. What school did you go to after your A school?
A I was attached to what they call a field medical service school, sir. That is another seven- to eight-week course.

Q Describe for me what your training is there.
A Basically, how to adapt and evolve with Marines and take care of them, sir.

Q Does that involve learning basically how to deal with trauma?
A Yes, sir.

Q You are looking for war wounds?
A Yes, sir.

Q You are looking for bullet holes?
A Yes, sir.

Q Sucking chest wounds?
A Yes, sir.

Q Looking primarily for injuries to otherwise healthy young men. Correct?
A Yes, sir.

Q Now, you understand as a doc, as a corpsman, you are going to be relied upon by others in a field unit. Correct?
A Yes, sir.

Q That you would be attached to a company of Marines at some point?
A Yes, sir.

Q And that others will be relying on your assessment. Right?
A Yes, sir.

Q Now, at either of those schools, did you receive

A training on how to detect things other than trauma in the sense of heart attacks, strokes, other illnesses? Slight training on detecting for strokes, heart attacks, and things like that, sir.

Q Okay. Now, part of your duties at Camp Whitehorse were to check on or take care of the Marines there at 2/25. Correct?

A Yes, sir.

Q There was a Navy Seal team. Correct?

A Every once in a while, they come around, yes, sir.

Q And there was the EPWs?

A Yes, sir.

Q And part of your duties, you would go check on them. Right?

A Yes, sir.

Q And you would go and do a once through in the EPW facility?

A Yes, sir.

Q And check for anything that was going on?

A Yes, sir.

Q Make yourself available. Correct?

A Yes, sir.

Q And in fact, on 4 June, you made your visit to the camp to check on the welfare of the new arrivals. Correct?

A Yes, sir.

Q There were three new prisoners in camp. Correct?

A Yes, sir.

Q And you, as a doc, you checked them. Right?

A When they first arrived, they were at the detention area the first time I saw them.

Q And you checked on them?

A I didn't have a chance to actually examine them, sir.

Q You checked on them as a corpsman?

A Pretty much a visual check, sir.

Q. Everything looked okay?

A Yes, sir.

Q You didn't notice anything that required any sort of action on your part?

A Yes, sir.

Q You didn't see anything that would alert you that it is time to do something with any one of those EPWs?

A Not at the time.

Q Now, when you were at Camp Whitehorse, there were some doctors assigned to that particular facility. Correct?

A Yes, sir.

Q Or actually to 2/25?

A Yes, sir.

Q. Lieutenant Commander McKenna?

A. Yes, sir.

Q And I believe it was Commander Santos?

A Yes, sir.

Q And where were they physically located?

A At the time, they were stationed in our forward position in the middle of Nasiriyah.

Q So Camp Whitehorse was some distance from where the doctors were located. Correct?

A Yes, sir.

Q Now, if someone was going to be evacuated from Whitehorse detention facility, the one who would make that determination is you. Correct?

A Yes, sir. Myself or Doc (b)(6)

Q So you could come in and say, I want this person out of here right now. Correct?

A Yes, sir.

Q And that is your call?

A Pretty much, yes, sir.

Q And as a courtesy, you might notify Major Paulus or the other command. But it was up to you if you notice something to say, Medevac, get him out. Correct?

A Yes, sir.

Q Now, the medical facilities at your direct location, which you indicated was three quarters of a football field away from Camp Whitehorse detention facility, you had basic first aid gear. Correct?

A Yes, sir.

Q You had IVs?

A Yes, sir.

Q And you had bandages essentially?

A Yes, sir.

Q And you didn't have any x-ray equipment?

A No, sir.

Q In fact, you didn't have any x-ray equipment at the other facility where Lieutenant Commander (b)(6) and Commander (b)(6) were at. Correct?

A No, sir.

Q And did you get a chance to go to the An Nasiriyah hospital?

A I had been there a couple of times, sir.

Q At that point in time, did they have electricity?

A They had some electricity, but nothing extensive, sir.

Q They didn't have much in the way of facilities there either. Correct?

A No, sir.

Q As a corpsman, you are the first line of medical defense for someone who is injured. Correct?

A Yes, sir.

Q When you came out to check on (b)(6) in the reck yard -- not the first time when you checked on the three EPWs, but the next time -- do you recall what day it was?

A Not exactly. It was the second day, sir.

Q The second day you recall (b)(6) being there?

A I only saw him that one time. I guess that was the second day he was there, sir.

Q Okay. The day of the defecation that you described, he was there. With you out there was Major Paulus. Correct?

A Yes, sir.

Q And there was Major (b)(6) out there. Correct?
A Yes, sir.

Q And there was Staff Sergeant (b)(6) Correct?
A Yes, sir.

Q And there was I think a Lance Corporal (b)(6) [sic]?
A I believe so, sir.

Q A Lance Corporal (b)(6)
A Sergeant (b)(6) maybe, sir.

Q Excuse me. Sergeant (b)(6) Was Sergeant (b)(6) out there?
A He was in the actual -- like in the middle part between two cell, if anything. But I didn't see him in the actual reck yard, sir.

Q. Did you ask Sergeant (b)(6) to come out and communicate with (b)(6) when you were checking with him?
A He was already speaking to him, from what I remember, sir.

Q Okay. When you checked out (b)(6) and you were sitting there looking at him, you noted no visible injuries on him. Correct?
A Nothing visible at the time, no, sir.

Q Okay. And you didn't notice any cuts on his hands?
A No, sir.

Q You didn't notice any bruises on the body?
A No, sir.

Q And you were looking. Correct?
A Yes, sir.

Q Because you are trained to look for trauma. Right?
A Yes, sir.

Q You didn't notice any of that?
A No, sir.

Q And then you checked for his pulse?
A Yes, sir.

Q And his pulse was strong. Correct?
A Yes, sir.

Q. And you checked the corraded pulse. Is that correct?
A. Yes, sir.

Q Did you have a stethoscope and check that out?
A Yes, sir.

Q So you did both?
A. Yes, sir.

Q. But you didn't take his blood pressure?
A No, sir.

Q You didn't have a cuff with you?
A I didn't bring one at the time.

Q You had a cuff though. Right?
A In the facility actually, sir.

Q In the facility, you mean where your aid station was?
A Well, we placed a medical bag inside in the berthing area for the guards in case they needed any extra gear. If they needed like bandages, things of that nature, sir.

Q So you could have gotten and checked his blood pressure, but you didn't do that. Right?
A No, sir.

Q You thought he was fine?
A Yes, sir.

Q And you told Major Paulus he is fine?
A Yes, sir.

Q And you've seen the defecation or at least were aware of the defecation. Correct?
A I was aware, yes, sir.

Q How long did your examination last?
A Probably ten minutes, sir.

Q And you found essentially nothing wrong with him at that point?
A Yes, sir.

Q Now, he was breathing just fine. Correct?
A Yes, sir.

Q Now, that sternum rub you did, that is just to get a physiological reaction. Correct?
A. Yes, sir.

Q. Almost like when you take a baby and go right down the bottom of their foot and their toes curl. Correct?
A. Yes, sir.

Q. And he reacted?
A Yes, sir.

Q And he didn't grab his side or didn't grab or point to his rib or anything else, did he?
A No, sir.

Q He just lifted his hands like you expected on a sternum rub. Correct?
A Pretty much, yes, sir.

Q Chest was rising and falling?
A Yes, sir.

Q Now, at this point, he is outside. Correct?
A Yes, sir.

Q Now, at that point in time, do you know how hot it was at the Camp Whitehorse facility at that day at that time?
A I don't know the exact temperature, sir, but I know it was kind of hot outside, sir.

Q. You are familiar with Camp Whitehorse. Correct?
A Yes, sir.

Q Sometimes it is hotter in the buildings than it is outside?
A Yes, sir.

Q And your opinion was he needed rest. Correct?
A Pretty much, yes, sir.

Q And you said resting right there is fine. Correct?
A I didn't say that, sir. I just said to keep an eye on him at that time.

MJ: We're going to take about a ten-minute recess.

The court-martial recessed at 1319, 30 August 2004.

The court-martial was called to order at 1338, 30 August 2004.

MJ: The court will come to order. The record will reflect all those present when the court last recessed are again present. The members are present. The witness, HM3 (b)(6) is still on the stand.

Members of the court, before we continue with this witness, I just want to remind the members of the need for everyone to stay alert and to pay attention to all that's going on in the courtroom throughout. I recognize that it is warm in here. Sometimes the testimony is not the most riveting. But it is all important, and it is of the utmost importance that you hear and listen to all of it. So if I don't call a break and you feel like you need one, please let me know and we will go ahead and take a recess whenever the members feel the need for one. All right?

Affirmative response by the members.

Defense.

DC: Thank you, sir.

Questions by the defense continued:

Q Petty Officer (b)(6) as far as facilities to get someone out of Camp Whitehorse and to medical care, that was something that was handled by your medical battalion. Correct?

A Yes, sir.

Q So you would have to request that they be picked up and then transported to wherever they are going to go?

A We had transportation available at the camp, sir. All we had to do was put in a request to get two guards to escort us to the main BAS, sir.

Q And you didn't request that in this case?

A No, sir.

Q Because you thought he was just fine?

A Yes, sir.

Q You didn't tell the guards or anyone there -- well, keep an eye on him but watch for this symptom or this symptom or this symptom, did you?

A Just keep a general eye on the person, sir.

Q And you gave Major Paulus a worst case, best case. And it was actually, it is a mild heart attack, or he is faking. Correct?

A Yes, sir.

Q Was there difficulties in getting Iraqi EPWs treated at Air Force facilities in like Tallil?

A We didn't take anybody to Tallil, sir. It basically went to either the Nasiriyah hospital or our BAS, sir. There was a little bit of difficulty.

Q In fact, you were told no more Iraqi nationals at American-based hospitals. Correct?

A We were turned away from Tallil once.

Q At the time that you examined (b)(6) when you were looking at him, checking his breathing, checking everything else, finding no trauma, it was light outside. Correct?

A Yes, sir.

Q And you didn't order a move from that location into one of the cells. Correct?

A No, sir. They were already getting ready to do that once I was done.

Q That's your understanding. You didn't see that. Correct?

A No, sir. But I was told that would be done.

Q You could have actually stuck around and kept an eye on him. Correct?

A Yes, sir.

Q But you didn't do that?

A No, sir. I was the only personnel there at the time.

Q And you are testifying today under a grant of immunity. Is that correct?

A I 'm not aware of that, sir.

Q You don't know whether you got immunity?

A No, sir. Nobody told me that.

DC: I have nothing further at this time. Thank you.
MJ: Government, redirect?
TC: Yes, sir.

REDIRECT EXAMINATION

Questions by the prosecution:

Q In order to make a diagnosis of a patient, is it important to get information regarding what other people might have observed of the patient's condition?
A I don't make actual diagnosis, sir. I make an assessment actually. A doctor or somebody with actual higher up medical training than me would make a diagnosis, sir.

Q Well, as far as your assessment, when you are making an assessment, is it important to learn facts surrounding why the person might be acting the way they are?
A Yes, sir. You might use something like a medical history or anything previous to that time you examined him to actually look at the person -- help better, like, guide towards certain things, sir.

Q When you learned (b)(6) had defecated himself, what exactly were you told regarding the defecation?
A As far as I remember, that he was in the cell and it happened -- he didn't move or anything towards cleaning himself up or anything like that, sir. That is what I was told.

Q But I mean specifically about the defecation itself?
A Nobody described it to me, sir. Pretty much at the most, they said it was like diarrhea. That was it, sir.

Q You mentioned earlier that someone had mentioned to you that (b)(6) was being belligerent. Is that what you said earlier?
A Yes, sir.

Q What exactly did they tell you?
A Basically, he was just kind of uncooperative and not very responsive to much of commands or anything, sir.

Q Did anyone tell you how he was taken outside?
A No, sir.

Q Did anyone tell you that they had seen him fall into a wall?

A Not that I remember, sir.

Q If you could, just in as much detail as you can, explain to us exactly what you were told regarding condition prior to your examination? (b)(6)

A Basically, I was told that he had an episode of defecation on himself. They didn't tell me how, but he was taken outside to be cleaned up. They wanted to check him to make sure there was no other further problems. That was basically it, sir.

Q. When you heard that he was being belligerent, what did that mean to you?

A. To me, basically, sir, maybe he just didn't want to get up when he was told to get up or -- that was about it pretty much. Nothing really ran through my mind about it. I just came to check out what was going on with him actually, sir.

Q. Now, when you told Major Paulus that -- when you gave Major Paulus that spectrum of heart attack and faking, what made you think that he might have suffered a heart attack?

A. Usually if somebody has a severe heart attack or things of that nature, they might just defecate on themselves because they lose all control of bowel movements, things of that nature, and that is a sign or symptom of it and that's pretty much where I got that assessment from, sir.

Q. Now, are you able to treat a heart attack?

A. Heart attacks really, sir, we didn't have any extensive like monitoring capability, EKGs or things like that, to actually monitor for a heart attack, but that was just my worst case scenario for the Major to keep an eye out for.

Q. Well, typically for someone who has a -- that you suspect might have a heart attack, how would you typically treat a person with that potential assessment?

A. With proper facilities, basically EKG monitoring, any rhythmic heart patterns, things of that nature, or basic monitoring of a person to see if there's anymore, you know, obvious signs of clutching the chest, things of that nature, sir.

TC: Thank you. That's all I have.

WIT: No problem, sir.

MJ: Anything else, Mr. Tranberg?

CC: No, sir.

MJ: I have no questions. Any questions for the witness?
A couple it looks like.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

Q. (b)(6), you talked about the sternum rub to chest.

A. (b)(6) Yes, sir.

Q. And I take it, that's some kind of a rubbing of the sternum?

A. Yes, sir.

Q. About hard would you say you pressed, hard or not very hard?

A. Say enough to crack an eggshell, sir.

Q. If an individual was suffering from six broken ribs, would the pressure that you applied be sufficient to cause pain to that individual?

A. Not really, sir. Basically depending on where the breaks where and the sternum is pretty much in the middle. If any of the like rib fractures was close to it, it might constitute pain, but usually a sternum rub is just a rub to the skin, and once the skin rubs up against the sternum, that causes a stimuli for him, you know, a positive reaction.

Q. So, you're not actually putting pressure on the sternum; you're just rubbing the skin?

A. Just pretty much rubbing enough to touch the sternum itself, sir.

Q. Are you familiar with what symptoms an individual might exhibit if they were suffocating?

A. Pretty much labored breathing, unresponsive, things like

that, sir.

Q. Did you observe any of those symptoms from (b)(6) when you were examining him?

A. No, sir.

Q. If you had been informed that a Marine had suffered or defecated on himself and you approached him and you found him in (b)(6) circumstance, would the examine you gave (b)(6) the same as you would have given a Marine or sailor?

A. Pretty much, sir. Those are pretty much the basic techniques I would have used to assess the person.

Q. Do you believe you would have given any more specific direction to the command in terms of follow up with that individual?

A. Most, probably not. It would be pretty much just follow up, monitoring the person, make sure nothing else goes on with him at the time, sir.

Q. Did you make any inquiries as to the last time (b)(6) had consumed liquid?

A. No, sir.

Q. Would that be a concern given the heat and the diarrhea?

A. Basically, no, sir, because having that he had diarrhea and positive liquid input enough that he could actually have the episode.

Q. You were also asked as to whether or not you observed any bruises on (b)(6) body during this examination. Did you observe any bruising?

A. No, sir.

Q. Did you examine him from head to toe, front side and backside?

A. Front side mainly, sir.

Q. Pardon me.

A. Front side mainly, sir.

Q. Did you turn him over at all?

A. Not that I recall, sir.

Q. Did you look to see if there were any bruises on the backs of his thigh or on his back?

A. No, sir.

Q. Can you tell us more specifically what you told Major Paulus after you completed your examination of Mr.

(b)(6)
A. Basically what I told Major Paulus was pretty much a worst case/best case scenario. As due to the fact I was told he was belligerent, he either could be faking (a) or he could have had a mild heart attack (b). That was the worst case scenario. I basically told the guards and Major Paulus to keep an eye on him for any further signs of like clutching the chest, any more defecating episodes, things of that nature, sir.

Q. Was (b)(6) conscious when you examined him?

A. Yes, sir, he was conscious.

Q. Did he say anything to you?

A. Something mild, but I really couldn't understand it. I'm not sure if it was Arabic or just a noise, but he did say a couple of words to me, sir.

Q. But you didn't understand them?

A. No, sir.

Q. Were his eyes open at all?

A. Not at the time, sir.

Q. Did he ever open his eyes?

A. He moved them around, but he really didn't open his eyes, sir.

Q. Did you pull his eye balls open and look at his pupils or anything like that?

A. I can't remember if I did, sir.

Q. Can you remember the name of any other detainee that you examined that had a medical problem?

A. Not specific names that were their actual names, sir.

Q. Can you describe some of the detainees and the medical problems that they had?

A. Well, we had one detainee who had sort of a goiter like growth on the left side of his neck and he was evacuated several times to Nasiriyah Hospital for further examination, as well as another detainee who required, I think it was -- I'm not sure if it was insulin or something like that. He was taken to Nasiriyah Hospital as well.

Q. Were there other detainees you recall that had injuries, say, bullet wounds or shrapnel or things like that?

A. One detainee came into us was like a lot of bruising and stuff on him, cuts and things like that. We managed those accordingly. He pretty much had a good turn around, sir.

Q. That's the only three you recall?

A. The rest of them were in pretty much regular, pretty good health, sir, for their standards.

MJ: Does that answer the members' questions?

MEM: Yes, sir.

MJ: Are there other questions from any other member?

Negative response by all members.

Major Francis, any other questions?

TC: Yes, sir.

REDIRECT EXAMINATION

Questions by the prosecution:

Q. HM-3 (b)(6) one of the members asked you about the care you gave to (b)(6) vice care given to Marines and sailors. Do you remember that question?

A. Yes, sir.

Q. Now, while you were a corpsman there in Iraq, did you ever treat any Marines that were suffering from diarrhea?

A. Yes, sir. We had sort of a case of -- like a break out there at the camp due to the conditions.

Q. And some of those Marines required IVs?

A. Yes, sir.

Q. Were any of these Marines you treated for the diarrhea, were they left out in the sun on the bare sand?

A. They basically returned to their racks or they came to the BAS, sir.

Q. I mean, were they left on the bare sand in the sun naked?

A. No, sir.

The witness was excused and withdrew from the courtroom.

Pages 229-233 Removed under (b)(6)

him up and move him to whatever area. I wouldn't authorize them to kick him or knee him or strike him in any way.

Lance Corporal (b)(6) U.S. Marine Corps Reserve, was called as a witness by the prosecution, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6). I am currently a lance corporal in the United States Marine Corps Reserve. My unit is 2nd Battalion, 25th Marines.

I deployed in support of Operation Iraqi Freedom. During that deployment, I was involved in the capture of (b)(6). I was present when HET members captured him. We went to the first house. He somehow escaped. He knew the Americans were coming. He made an escape and Lance Corporal (b)(6) and Sergeant Haidar went after him. I was in that general area. When they went after him, he put his hands up half way. They just told him to stop. (b)(6) speaks Arabic, so he understood that. Pretty much from there, he just gave up and came back. I didn't observe them have to use any physical force with him. I did not observe them punch, kick, or hit (b)(6) in any way.

After (b)(6) was taken into custody by (b)(6) and (b)(6) I did observe other people in the vicinity, some kids, women, and elder people. There were kids there of various ages. They were scattered, so I couldn't tell you how many children. At some point, we took (b)(6) away from his house. As we were taking him away, the children were crying, just sadness in the general area. I guess he was loved or whatever. I don't know.

Once we were completed with the capture of (b)(6) eventually we took him to Camp Whitehorse to the detention facility. When we arrived there, I had a conversation with Sergeant Pittman. I just informed him that this was a big capture. This guy was involved in Jessica Lynch's unit's ambush. Later on I was asking him if I could be a part of the interrogation, if he could speak to my squad leader because my squad leader was not going to let me do it. Sergeant Pittman just went along with it. During the inprocessing of (b)(6) I just did the tags, taking down his info. I wasn't present for his strip search.

When I said that (b)(6) was running away from a house, he was moving at more like a fast walk, trying to like conceal himself,

walking and looking back. It didn't appear like he was having any problems walking. He appeared healthy to me.

CROSS-EXAMINATION

Questions by the defense:

The first time I saw (b)(6) was when he was captured. I didn't actually see him walking away. I seen him walking back in my direction. I wasn't in the same HMMWV with him. I was in the same capturing unit. I had a chance to get up close to him. When I saw him, he was winded, breathing hard, and sweating. It was hot. We then went to Camp Whitehorse with the three EPWs that were captured that day. I was in one of the vehicles with the EPWs. When we got to Camp Whitehorse, I didn't notice anybody getting dragged off a vehicle and thrown to the ground. I didn't see anybody dragged by their legs and their butts were thrown on the ground.

This was a big case. There were a lot of Marines and just a lot of people in the general area. Probably more than 30. We all arrived at the same time. When we got there. Major Paulus was with Sergeant Pittman. Staff Sergeant (b)(6) was there. I believe Staff Sergeant (b)(6) was there. When I told Sergeant Pittman that we got the guy from the 507th, he didn't say, Oh, good. He just kept it cool.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I was not standing there when (b)(6) was offloaded from the HMMWV at Camp Whitehorse. I did not witness (b)(6) removed from that HMMWV. I said there were two other detainees that came in with (b)(6). I did not watch their offload.

The court-martial recessed at 1454, 30 August 2004.

The court-martial was called to order at 0746, 31 August 2004.

The defense made a motion to dismiss, Appellate Exhibit CXLII, and argued that dereliction required inaction on the part of the accused. The trial counsel argued that there had been sufficient evidence presented that there was a duty and that the accused was derelict in that duty. The military judge denied the motion.

The members entered the courtroom.

PRESENTATION OF DEFENSE CASE

Dr. B. L. Peterson, a civilian, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Brian Lee Peterson. I reside in (b)(6)

Questions by the defense:

I'm employed by a company called Forensic Medical Group in (b)(6). I am a forensic and hospital pathologist. Following three years of undergraduate education at Marquet University in Milwaukee, I entered medical school at the Medical College of Wisconsin in Milwaukee. Attended there from 1976 until my graduation as a MD in 1980. That was under the auspices, by the way, of the Health Profession Scholarship Program and I was commissioned a reserve ensign at the beginning of medical school, so I do appreciate your tax dollars.

I spent the first year after medical school doing a rotating or flexible internship at the Medical College of Ohio in Toledo, Ohio. Following that training, I began two years of service as a general medical officer with the Marines at Camp Pendleton. Battalion surgeon for my first year; battalion and regimental surgeon for my second year. After those two years, I entered a training program in anatomic and clinical pathology at the Naval Hospital in San Diego. That was a four-year program.

Following those four years, I moved to the East Coast and spent a year at the Armed Forces Institute of Pathology in Washington D.C. That was for my fellowship in forensic pathology. During and after all that training, I took two separate examinations offered by the American Board of Pathology, our certifying agency. The first combined anatomic and clinical pathology, which I passed. The second in forensic pathology, which I also passed. Back in 2001, I went through voluntary recertification, passed; so, according to the board, I'm good for ten more years.

Following all that training, I returned to Naval Hospital San Diego. I should mention that when I was at the Armed Forces Institute, the Office of the Armed Forces Medical Examiner was created, so I was actually there when that happened. I returned to San Diego as a Regional Medical Examiner. I spent another five years or so in the service, prior to leaving and joining my

present practice about 12 years ago. During the course of all that time, I performed something on the order of 5,500 autopsies, and testified in court a couple hundred times. Most of my work comes from the district attorney in the civilian world. I would imagine that is probably 98 percent of what I've done. I have actually testified in court maybe three or four times for the defense. I've consulted on a few more cases than that, but not actually testified. The majority is testifying for the prosecution. I like to think that I'm testifying for my patient, not so much for the prosecution, but I'm called by the district attorney.

Depending on the type of case, basically autopsy involves a dead patient and it's a procedure directed towards determining cause of death and manner of death. Cause of death being the actual process that caused death. Manner being how the cause arose; namely, accident, natural, suicide, homicide, or other. The extent of that procedure varies with the case. It can be as little as a medical record review in an appropriate case. It can be as much as a complete internal examination with extra testing, such as toxicology, x-rays, and so forth. It all depends on the nature of the case. In the forensic world, typically the autopsy is applied to medical legal issues, so there can be other issues involved, such as the recognition and collection of evidence and so forth. The purpose of autopsy ultimately is to determine the cause of death and the manner of death depending on one's jurisdiction.

At the end of an autopsy, if things work out right, you end up with a list of anatomic diagnoses in the autopsy report, which is the medical document created at the time of autopsy; a descriptive narrative section of the report, which essentially describes the portions of the procedure and the findings therein. Other documents may be involved, such as toxicology testing and so forth. But again, it's a medical document which, in my view, is like any other medical document. I create mine in a contemporaneous way at the time of the autopsy, and once it's done, it's done.

There is a standard to which I as a medical doctor and forensic pathologist testifies. There are different levels. Typically, I'm testifying with respect to my findings beyond a reasonable doubt. I have been involved in civil cases where the standard is different, within reasonable medical certainty. It just depends on the case.

If things work out ideally, and they don't always, my first step in an autopsy is information gathering, and in the civilian world,

that information is typically provided by the coroner's office, the medical examiner's office by the investigators therein, sometimes by police agencies if it's that type of case. So I'll review whatever information might be available at the outset.

The next step, if appropriate, would be to order additional studies on a body, which might include, for example, x-rays. A gunshot injury is a consideration, sharp force injury. Once those studies have been completed, the next step is the external examination and that's simply a process where I will document the external findings, however the body is received. It can include clothing, possessions, external injury, evidence of external disease, or congenital abnormality. It just depends on the case.

The next step is the internal examination. Again, it's kind of thing you can see on the Discovery Channel these days. We do make a Y shaped incision, assess the organs in the chest and abdomen. My assessment includes weights and measurements. I take samples of organs for later microscopic study, if necessary. I always take the samples. I also collect specimens for drug and alcohol testing, blood, urine, occasional fluid from the eyes and so forth.

The next step would be to remove the brain. In a case where there's potential injury to the neck, the final step is actually a layer-wise dissection of the neck after the other cavities have been examined. Once that physical part of the procedure is done, I'll finish my report either on a computer or by dictating, order the appropriate studies. Once the studies have returned, I'll sign the report off. That's basically the end of my involvement in the case.

I have had the opportunity to review autopsies from other pathologists for both sides. My approach for reviewing somebody else's autopsy is to essentially accept their physical findings at face value. My opinion has always been that whoever did an autopsy has an advantage over me. They're there at table side. They're actually seeing the body. They're performing the autopsy. So I will tend to accept their physical findings just as they are. I may differ with them in regards to interpretation of those findings, but the findings are the findings.

When I'm conducting an autopsy, depending on the case, the main documentation I produce is the autopsy report. It may include diagrams, if I produce diagrams at the time of the autopsy. It may also include the toxicology report and results of other studies, but the basic document is the autopsy report. If you were to look at one of my autopsy reports, the first page would be

a list of anatomic diagnoses, findings at autopsy, occasionally historical findings. There will be a cause of death listed and then the subsequent pages of the report will be a description of the external examination, the internal examination with respect to the body cavities examined and a description of each of the organs, ultimately also a list of specimens retained.

The purpose of the autopsy report, again, is it's a medical legal document. The autopsy report serves later on for me of refreshing my memory. I can guarantee you at my rate of work and in a given year, I'll perform typically around 400 autopsies. It's simply not possible to remember findings from one case to another, even in a high profile case. That's just too much workload. I can't keep it in my memory. So the autopsy report serves to refresh my memory, if need be, and also is a record there for the family. Occasionally, families will call me with questions from the report. It's the last medical document produced for that patient. The report is a record of my final examination. As I mentioned earlier, when I examine somebody else's autopsy report, I will tend to take their findings at face value and assume that they're accurate, at least as best as that pathologist can do. I would hope that anybody examining my autopsy report would pay me the same courtesy and assume my findings were accurate and accept them. But that's the last chance anybody has to see that individual unless, of course, they're exhumed and examined again.

When I'm doing an autopsy, my expectation of myself in terms of my ethical duty is, number one, accuracy. Certainly it takes a certain amount of experience to recognize findings and we all can gain experience as we go along if things work out right. So it's a matter of recognizing findings and accurately documenting findings. There are certainly cases where I will not document to the last iota everything about that body. Sometimes it's simply not necessary. If somebody died, for example, of a self-inflicted gunshot wound to the head, then the fact that they have an ingrown right toe nail isn't particularly important. And I may not document that just to save time and space. But by the time I am through, I feel my duty is to have accurately and sufficiently described my findings that another pathologist can look over my shoulder in a metaphorical way, read that document, and see the same things that I saw.

When there's a sloppy or incomplete autopsy report or one where all of the procedures aren't followed, it makes the review much more difficult. Of course, the saying about doctors that treat live patients, that they bury their mistakes and a certain degree applies to pathologists too. Usually once the autopsy's done, there's not another chance to look at that body, and if there is

in the case of a exhumation, for example, there are a number of anatomic changes produced by the first autopsy that simply can't be reversed. There are certain findings that can only be seen at the time of that first autopsy. So if the autopsy has been done in a sloppy way, if the documentation has been done in a sloppy or inaccurate way, basically findings are lost forever.

I indicated I make my reports pretty much contemporaneous with the autopsy. I've found, particularly as I get older, that my memory can be fallible. I have a hard time remembering what I had for breakfast Saturday and autopsies are the same way and it's a matter of losing memory with time. I think there's a certain half life there. The other problem is that there have been days where I've done as many as eight or nine cases and I will tell you that by the time I'm finishing the eighth or ninth case, it's hard to remember the first. So my practice has always been to complete each case before moving on to the next, whether it means producing the written report using my computer, finishing the dictation, whichever. I'll have that done before moving on to the next case just to ensure accuracy and my best recollection.

I indicated the importance of documenting injuries. When I document an injury, I put that in the actual autopsy report. And I document everything I can about that injury. The purpose of that is to give anybody else reviewing the case a chance to see what I saw. Depending on the type of injury, that will drive the type of documentation that I'll produce. For example, I might place an injury with respect to anatomic landmarks so in court, a lay person can understand my description. If I talk about a gunshot wound 3 inches to the side of the nipple and 12 inches below the top of the head, that's easy to visualize even for somebody who's not a physician. It's a matter of clarity, and it's a matter of preserving that information for later review.

I indicated that the autopsy report is a medical document. If it's not documented, it's not there. Like any other hospital medical record, if something is in that record, it happened. It's available for review. If it's not in the record, it didn't happen. You typically hear about that in the hospital setting where perhaps a medication dose was not given or it wasn't reported in the record. If it wasn't reported in the record, for medical ethical purposes, it didn't happen. By the same token, my view is that if there's something that's not recorded in the autopsy report, then either it didn't happen or else there's simply no more information available.

Postmortem is the period after death. We typically talk about the early postmortem period. Changes in that period include cooling

of the body, stiffening of the muscles, and settling of the blood following gravity. And then the late postmortem period changes including autolysis, which is as the body begins to resolve itself; putrefaction decomposition, bacterial action, ultimately leading to skeletalization.

Putrefaction is actually a process like fermentation. It involves micro organisms in the body, bacteria, fungus, et cetera, that produce their own set of digestive enzymes and go to work dissolving the body and eating the fluids.

Take injury, for example, it's possible to have injury that occurs before death, antemortem. It's possible to have injury that occurs after death, postmortem. Sometimes that's clear; sometimes it's not. If it's unclear, the term I prefer is perimortem, with the implication being the injury could have occurred either side of death. Perimortem is around death.

Lividity or livermortus is a phenomenon visible on the skin and actually in the internal organs as well. What it is, once circulation stops with death, the blood is simply effected by gravity and as the blood settles in pools, it produces a purple color in the skin. It produces darkening in some of the internal organs, such as lung and kidney. The rule of thumb that we use, and like all rules of thumb, it's inaccurate, but in tempered conditions, lividity will typically be noticeable within, say, two to four hours after death. It will be full by, say, 12 hours after death. By 24 hours after death, it will be fixed. In other words, before that time, it's possible to blanch lividity by thumb pressure. It's also possible to move lividity on the body by re-positioning the body. The time scale though is inaccurate, but once lividity is fixed, that can be helpful. For example, if a body has fixed lividity on the back but is found positioned on the front, the implication is that the body was moved after lividity had become fixed. Lividity can depend on body position. If someone is in a fetal position and later on their back, you can get lividity on both sides of the body. Lividity will follow gravity. You won't see it in areas that are exposed to pressure. In the case of somebody dying flat on their back, you might see lividity on portions of the back that aren't in contact with the surface below the body.

The significance of lividity is it can produce a clue with respect to postmortem interval. If a body has not been further modified by, say, refrigerated storage, for example, if lividity is still movable, that tells me that that body is still in the early postmortem interval for that body. By the same token, once lividity is fixed, that can give me a clue as to whether that body

has been moved.

I indicated that refrigeration can slow the process and heat and conditions like that speed that process up. Any of the postmortem changes that we talk about, lividity, rigidity, decomposition, et cetera, are hastened by heat and retarded by cooling.

Autolysis is actually the body's own enzymes working to produce postmortem change, typically dissolving. For example, the organ often times first affected by autolysis is the pancreas. The pancreas produces digestive enzymes. Following death, those enzymes are still there, but now there's no more circulation to protect the pancreas. So it starts dissolving itself. It would be that type of change and that occurs in other organs of the body.

Blunt force injury is a type of force application. We forensic pathologists tend to be splitters. So we'll talk about blunt force, sharp force, et cetera. Blunt force is three or four types of injury, depending on how you count them. The three major types of blunt force injury are contusion, abrasion, and laceration. Contusion is simply a bruise. Abrasion is a scraping type injury like road rash. Laceration is a crushing or tearing type injury, led pipe against the head. There is a fourth type of injury that bridges the gap between blunt force and sharp force called a chop injury. Think of an object like an ax or a hatchet or a machete that will produce sharp force but, because of its size and weight, can also produce crushing around the margins.

The connection between a bruise and a blunt force injury is a bruise or contusion. Those type of injuries are caused by the application of blunt force. Whether it's the application of an object against the body or the body against an object, sometimes it's not possible to say. Some contusions have a pattern. Think about an object like a framing hammer with a waffle type head, an adjustable wrench with the different surfaces on a wrench. Those type objects will sometimes leave those very familiar patterns on the body. So it's possible just by looking at the injury to make a diagnosis regarding what applied that force. Often times though blunt force tends to be generic; particularly with time as a bruise spreads, the pattern may go away or there may not have been a pattern to begin with. Usually it's not possible to tell what caused a bruise.

If it is a bruise, then it was caused by blunt force. There are other possibilities, however. Occasionally, I will use the term "ecchymosis." That implies that there are changes within the skin that could be a bruise, but they might be caused by bleeding due

to other causes. For example, somebody who has a blood abnormality, leukemia, for example, tends to bleed spontaneously in the skin or can, not caused by blunt force, but caused because they have coagulation problems. That's one possibility. Another possibility is that there actually can be injuries that look like bruises but are postmortem and that can follow lividity. So it's possible to handle a body roughly in the early postmortem period before lividity is fixed, position that body such that that injury is down affected by gravity, and by the time lividity becomes fixed, that looks like an antemortem injury. So that's another possibility. If a body is handled roughly, the bruises can appear postmortem. Often times the source of a bruise cannot be determined as far as a blunt force injury as to what that blunt force might have been.

I am familiar with the autopsy conducted by Colonel (b)(6) on (b)(6). I am familiar with the addendums that she wrote in regards to her first reports and subsequent reports. I am familiar with the changes she made to the reports after she testified at the Article 32 hearing.

Accompanying the autopsy reports, I had a number of photographs to review. There was one series of photographs taken by NCIS apparently once the death was discovered. A second series of photographs were taken at the time of the autopsy, distinguishable by the marked postmortem change in those photographs versus the relatively better body condition in the photographs taken by NCIS. I also reviewed a report by the investigating officer at the Article 32 hearing, also a number of testimonies offered at that hearing, including testimony by (b)(6) Lance Corporal (b)(6) and also a Dr. (b)(6). I did review his medical history. That certainly can be significant when I'm looking at an autopsy, to know a little bit about the person's family or medical history.

One of the disadvantages we have at autopsy is that typically that type history is not available. If there is family around, they often times don't want to talk to me and sometimes not even to the coroner's investigator. But that history can certainly be helpful, and in some cases, if appropriate, I will use that history alone to establish a cause of death without even performing a physical autopsy. For example, if somebody had a history of morbid obesity, high blood pressure, diabetes, and according to the family had two days of severe crushing chest pain and then collapsed suddenly, I might put all those things together and decide within a reasonable medical certainty, which is the level of proof required for death certification, that it was a heart related death and likely involved a heart attack and simply

sign off on the case on that basis without performing the autopsy.

Insofar as the medical history of (b)(6) in which Colonel Ingwerson's autopsy was performed, there was the history available that seemed to indicate that this man had a history of asthma and allergies. It is important for a pathologist to know these things because in a case where I'm uncertain about what led to death, any history is helpful and a history of allergies and asthma by itself isn't particularly useful. There are degrees of asthma. There can be asthma, for example, that is exercise related, exercise induced, and response to inhaler treatment, all the way to severe life-threatening asthma that requires ongoing steroid therapy and anything in between. So to simply say this man had a history of allergies and asthma perhaps isn't all that helpful in and of itself. It would have been nice to know how severe the asthma was.

In regards to the autopsy conducted on (b)(6) by Colonel Ingwerson, based on everything that I reviewed, my opinion is that the cause of death, if I had been in the autopsy, would be undetermined. I make that determination for a number of reasons. In the first place, there were basically two sets of injuries, as I would interpret them in this case. The first set I would characterize as perhaps moderate. That would involve the fracture of the hyoid bone and the rib fractures, wherever they were and to whatever degree they were. That was hard to say. The second set of injuries would perhaps serve as marker type injuries, but of themselves were basically trivial with respect to cause of death. Those would be the contusions, the bruises, and so forth. There were a few abrasions on the skin as well, which would serve as markers of force application, but again, with respect to cause of death, weren't significant. That's on the one side. That's traumatic injury.

We also know that the postmortem toxicology was basically non-contributory. It showed products of decomposition, so this was not an intoxication type death.

Finally, to my eye, reviewing the photographs taken by NCIS when the body was in better shape, there was a peculiar congestion pattern in (b)(6) face involving congestion of the head and neck. I typically see that in heart related death, not necessarily heart attack, per se, but in a case where perhaps there was severe hardening of the arteries or there was enlargement of the heart due to high blood pressure. Those type of things produce that congestion pattern. So on the one hand, I do not have sufficient mechanical injury to produce death. On the other hand, there are some medical findings that are at least

provocative, if not conclusive. Since I really don't know where to put my money in a case like that, I think that undetermined as a cause of death is the scientifically appropriate way to go. That is an appropriate finding for a forensic pathologist to make.

If that had been my autopsy and those had been my findings, my cause of death would have been undetermined. I guess the other factor that I should have mentioned but didn't was the decomposition and postmortem change can effect a lot of findings. For example, organs begin losing mass as they dissolve. In this case, we don't know what the organ weights were. There were no weights provided in the report, but the heart may have been heavy, at least initially. Dr. (b)(6) mentioned in her report that the heart had undergone severe autolysis; in other words, it had started to dissolve and liquefy. When that happens, the mass goes away and it's a relatively fine change in terms of the metric system. The heart in a man of (b)(6) size may have been expected to weigh in the order of, say, 300 grams. If it weighed as much as, say, 500 grams, that would be significant. We simply don't know. It was not weighed and likely because of postmortem change, the weight wouldn't have been helpful anyway. But again, if there were possibilities like that, it would tend to lead me to a natural death conclusion, but because of postmortem change, lack of history, whatever, I just can't come down on it with a reasonable medical certainty. I believe undetermined is the appropriate conclusion.

As far as weighing something, I never just pick something up in my hand and say "it weighs X number of grams." I would not describe a heart that has undergone autolysis as normal and the reason for that is that I will still describe that heart in terms of, say, the coronary arteries, whether they're open or not; the valves, whether they've been diseased or not. For example, high blood pressure, simply a heavier heart and then the main pumping chamber, the left ventricle, is increased in thickness. With postmortem dissolving with autolysis, that goes away. So I think it's not possible to describe that heart as normal. It's possible to document your findings, but to reach the conclusion that that heart was normal with those kind of changes simply isn't possible. I recall Dr. (b)(6) mentioned the heart was normal in her report.

Based on my review of Colonel (b)(6) autopsy report and everything else I reviewed, my opinion would be that in this case I would also leave the manner as undetermined. I would likely place a comment on this type of report. My comment would be that the injuries, in my mind any way, aren't sufficient to produce death, number one. Number two, the natural changes that may have

been there were likely clouded by decomposition which is a problem we're all up against, no matter who does the autopsy. I think the death was likely a natural death, but because of the postmortem change, I simply can't prove it. So I would prefer in a case like that to leave the manner of death also undetermined.

The closer in time I am to the death of an individual and to perform that autopsy, the more accurate my results would be. My understanding of this case is that the temperatures were very high. As I mentioned earlier, in the case where temperatures are high and there was no effect of postmortem refrigeration, then postmortem change would be rapid. The more rapid the postmortem changes, the less likely you are to reach good conclusions about natural disease.

Colonel (b)(6) mentioned in her report that there were (b)(6)

That was the extent of her documentation. Based on that report, just that information I have, I can't really reach any conclusions about the broken ribs. There were a few problems. Number one, based on that report, and that's the document that I had to review, I don't know where those (b)(6) I don't know if they were anterior, lateral, or posterior. It could have been anywhere.

Number two, because of the postmortem change that this man was subjected to. I can't even competently say that those had to be antemortem (b)(6) in other words, (b)(6) occurring before death. I think for a number of reasons it's possible, although I can't prove it one way or the other, that they may have been postmortem (b)(6)

Finally, the nature of the (b)(6) wasn't described. The (b)(6) is a hollow bone. It's like a tube. Each side is called a cortex. There is bone marrow in the inside. And (b)(6) can involve one cortex or both cortices. They can involve a (b)(6) that's been (b)(6) in towards the lung or (b)(6) out towards the skin. That description wasn't in her report either. So there simply wasn't enough to go on regarding description.

In my practice, I tend to produce a lot more documentation. In the case where there are a lot of findings, I think less documentation might be appropriate. For example, I recently had a case of six people killed when a big rig hit the back of their van. They all had significant and severe blunt force injury, including extensive head fractures. In those cases, I did not spend a lot of time documenting (b)(6) and, in fact, I used

the term (b)(6) Anybody reviewing the report would not know where those fractures were. I, reviewing my report, would know where those fractures were, but it simply wasn't important in those cases. There were other significant and severe injuries that were diagnostic in pattern. In this case, there were not significant severe injuries. They were relatively minor injuries. If my hands had been performing this autopsy, I would have spent a lot more time documenting what was there because that's all I would have had.

What I would have done with those (b)(6) would have been to (b)(6)

landmarks. That kind of documentation might have been helpful. It simply wasn't present in this case. I would also have them photographed. It's important to document that injury so that other people can review that and know that's what the findings were.

The effect of a non-thorough documentation of an injury, in this specific case, is that it leaves me in the dark. The problem with (b)(6) is that depending on where they are on the body, that can have implications with respect to the kind of force that was applied and how that force was applied. So for example, there are (b)(6) that we'll occasionally see in the front that relate to cardiopulmonary resuscitation, typical in patients that have undergone that process. There are other types of (b)(6) (b)(6). Kids that have been abused will occasionally have (b)(6) on sides where they've been picked up and squeezed. Sometimes the position of the (b)(6) and the nature of the fractures can tell us something about what kind of force was applied and how it was applied. In a case where there's no such description, there's just no way to say.

I didn't see anything in the report that said the (b)(6) were approximately two days old based on hemorrhage at the time of autopsy. The phrase that I can recall was that the (b)(6) had attendant hemorrhage. I'm not sure what to make of that. As I said, based on basically a scant description and no anatomic location of those (b)(6) I can't even say with confidence that

they were antemortem (b)(6) They could have been postmortem (b)(6) based on what I thought was pretty good documentation of rough handling of that body postmortem.

I can't look at a (b)(6) and say that's no more than two days old. In my hands, what I would do would be to take a long section of that (b)(6) including normal (b)(6) on both sides, and then the (b)(6) in the middle, look at that microscopically, and there are changes as bone heals, as cells move in and cells move out in an attempt to repair that (b)(6) that can be helpful in terms of dating. That's the only way I know of to accurately date (b)(6) There can be help occasionally from the radiologist looking at callous formation as there's more healing and so forth. But I always I kid them that they're looking at shadows and I'm looking at the real thing. So I prefer to have a microscopic section. I don't believe there was any microscopic section done in this case. If there were, it wasn't documented.

(b)(6) can't (b)(6) postmortem spontaneously, but they can be (b)(6) postmortem. I wouldn't tend to use a term like "hemorrhage" because that brings to mind blood moving under blood pressure. Can there be oozing or seeping or draining around injury postmortem? Sure, happens all the time. In the (b)(6) the marrow in the center is pretty much liquid at normal body temperature. Certainly at desert temperature, it would be expectant to be liquid. There is no reason why that marrow couldn't drain out of a fracture postmortem and produce the appearance of antemortem hemorrhage; whereas, in reality, it's a postmortem artifact.

Artifact is a change in the body that's real, but it's misleading. An artifact implies that it looks like injury, but in actual fact, it isn't an injury or it's not antemortem injury in this case.

So far as the microscopic examination, the tissue samples, and dissection of the ribs, that could have been done in this case. Of course, in this case the body was decomposing and that makes things harder. But to get back to the rib fractures, as an example, a microscopic section may have shown us whether or not there were healing changes in that bone. They may have shown us a phenomenon called "vital reaction" in the tissue around the bone. Vital reaction in response to injury is simply white blood cells moving into the area to help with repair. You can see that in soft tissue. So, one way of determining whether an apparent injury is anti or postmortem is to look for vital reaction. I don't know in this case if it would have been possible to see because of postmortem change. What I do know is that, as best as I can tell, it wasn't looked for and it might have been helpful.

Based on her autopsy report and additional evidence I reviewed, I can't tell when these (b)(6) Based on the description that was there, these fractures could have been days, if not a week or two old. They also could have been postmortem, which is aged on the other side of death. With the naked eye, you couldn't just look in there and say this was fractured before or after death.

I have seen (b)(6) before. It depends on where exactly the fractures are to determine what kind of trauma it is associated with. Bilateral fractures in the front of the chest, I see often times with cardiopulmonary resuscitation, pressure on the chest. In children, bilateral fractures on the sides implies squeezing type force. In adults, bilateral fractures on the sides, same as with kids but more force, a crushing type force. Say a highway speed accident where the passenger compartment comes in on the victim and they're crushed. That's possible too. Multiple applications of force can produce bilateral rib fractures in different locations. Again, it depends on the location and the type of fracture. In my experience, I have never seen a single kick to the chest cause a bilateral rib fracture.

A contusion is a bruise, a type of blunt force injury. It's actual mechanical damage to the small blood vessels. When a crushing type force is applied, it causes small vessels to rupture and the blood then to ooze out into the tissue under the influence of blood pressure. There is a characteristic appearance on the skin and certainly on fresh skin. Since I spent the weekend helping to frame a cabin, I've got all sorts of contusions of different color. So those are visible on the skin. Contusion is also visible in tissue. Sufficient application of force to the chest with fracturing of ribs can produce contusion in the lung. This is visible from one section of the lung. It all depends on where the contusion is, but often times naked eye evaluation, maybe incision into the skin, and maybe microscopic section are all ways of evaluating a contusion.

Decomposition makes everything tougher on a forensic pathologist to determine if something is a bruise. The color changes that one sees in decomp, the softening of the tissue and so forth, can all produce confusing artifact and sometimes make it simply impossible to tell if there is injury there or not, especially if it's a small injury. Heat hastens decomposition and it makes our life rougher.

Based on Colonel (b)(6) autopsy report and affiliated documents, it is not possible to a reasonable degree of medical certainty to tell when of the bruises found on (b)(6) occurred.

I can look at a bruise on the skin and we've all had this experience, looking at the color changes on our bruises, and we know that in a light-skinned person, they tend to start out looking sort of pink. They eventually turn a little more lavender, then gray, maybe yellow/green around the edges as they finally resolve. So by looking at, say, two different bruises on the same person, I might be able to say, well, bruise A is older and bruise B is newer. By looking at a large number of injuries, if they're all the same color, I might be able to say these were likely all inflicted about the same time, but to look at a specific bruise and based on color, say, oh, that's 3 days, 4 hours, and 12 minutes old is simply impossible.

Suffusion is a change. I mentioned earlier it involves extra collection of blood in tissue, often times in response to natural disease. I'll use that with respect to congestion of the neck and face in a heart-related death. I'll talk about suffusion of the head or neck. In the freshest pictures, the ones taken by NCIS of (b)(6) there was suffusion of the neck and head. Odds are, with nothing else going on, it tells me it was a heart related death. It is common in someone aged 52 to appear as (b)(6) did with that heart ailment and appear with that same amount of suffusion. I see it every week.

I examined some photographs in my evaluation of the autopsy of (b)(6). Those included pictures taken by NCIS some time after his death, within 24 hours or so.

The civilian counsel displayed Prosecution Exhibit 13 on an overhead projector.

Prosecution Exhibit 13 is a view taken of the right side of the (b)(6)

Pages 251-261 Removed under (b)(6)

(b)(6)

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I was paid for my consultation and for testifying today by the government. I'm testifying at the request of the defense.

Hospital Corpsman First Class (b)(6) U.S. Naval Reserve, was called as a witness by the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution:

Q. Please state your full name.

A. (b)(6)

Q. And please state your current rank.

A. I'm a Hospital Corpsman First Class.

Q. And what's your current your unit?

A. 1st Battalion, 25th Marines, Weapons Company.

Q. You are -- what's your current city and state of residence?

A. I live at (b)(6)

TC: Thank you.

MJ: Defense.

DC: Thank you, sir.

Questions by the defense:

Q. Good afternoon, Petty Officer (b)(6) Just for the members, if they don't know, what is the equivalent rank of a Petty Officer First Class in the Navy to a Marine Corps rank?

A. I would be equivalent to a staff sergeant, sir.

Q. Thank you.

A. You're currently a Reservist in the United States Navy?
Correct, sir.

Q. What unit are you currently attached to in the Reserves?
A. I'm with 1st Battalion, 25th Marines, Weapons Company.

Q. And how long have you been there?
A. Barring my deployments with 2d Battalion, it would be about six years.

Q. And how long have you been in the United States Navy?
A. Approximately eight years, two months.

Q. What's your MOS designator?
A. I'm an 8004, field hospital technician.

Q. And could you briefly explain to the members what formal military education you received in order to fulfill the requirements of that billet, please -- or of that MOS?
A. You would have to go through Field Medical Service School, which I went to Camp Lejeune, North Carolina, for that.

Q. And how long did that last?
A. I was in a program called -- my apologies. I can't recall the name of the program right now, sir, but basically you did five months of drills to do the didactic and then you had a 17 to 18 to do the field portion, the hands on portion at Camp Lejeune.

Q. And when you completed that course of instruction, at that point were you certified 8404?
A. Yes.

Q. Have you attended any other schools in the military that relate to your MOS?
A. I've done schools as far as PHTLS classes. I've done that.

Q. And what is PHTLS?
A. Pretrauma -- pretrauma life support -- pre hospital trauma life support.

Q. And where did you complete those classes?

A. I did that at Camp Lejeune. I did a CPR instructor course at NATS Newport, Rhode Island, and I did my biology technician at Camp Lejeune, North Carolina.

Q. Okay. And when you're not drilling as a Reservist or activated as a Reservist, what do you do as a civilian?

A. I am a carpenter and a carpenter foreman and I run the residential projects.

Q. Let me draw your attention to March 2003. What unit were you attached to at that time?

A. I was attached -- I believe it was the 18th I got my orders to mobilize back to 2d Battalion, 25th Marines.

Q. And when you mobilized to 2d Battalion, 25 Marines at that time, what was your duties essentially?

A. I was a BAS corpsman and I also worked the supply embark. I was the supply embark petty officer.

Q. And did you deploy to Iraq with 2/25?

A. Yes.

Q. At some point when you arrived in Iraq, did you become assigned to essentially a billet at Camp Whitehorse?

A. Yes.

Q. How long after you arrived in Iraq did you start working out of Camp Whitehorse?

A. When the battalion moved forward out of Kuwait, we went into Camp Whitehorse or what was to become Camp Whitehorse. That's where we stayed for extensively the entire time.

Q. Do you recall approximately when you arrived at Camp Whitehorse?

A. It was the first week of April.

Q. And from that point on, how long did you remain at Camp Whitehorse?

A. Myself, I stayed there until the unit retrograded back down to Kuwait.

Q. And approximately when did the unit retrograde back to Kuwait?

A. I believe it was around the end of -- it was the end of June, beginning of July.

Q. Okay. What were your duties when you were stationed at

Camp Whitehorse in Iraq?

A. Casualties, just a corpsman. I was the senior. Approximately a month after we arrived there, the main body of BAS went forward into the Nasiriyah Hospital -- a museum to pick up where the MEU was. So, my duties actually increased at that period and I became the senior corpsman there with myself and another corpsman to take care of -- we had about 180 Marines under our care and the total end strength of EPWs.

Q. And who was that other corpsman that was at Camp Whitehorse with you?

A. HM-3 (b)(6)

Q. And you were the only two corpsmen permanently assigned to that facility?

A. Yes.

Q. You said you were responsible for the 180 Marines of H&S Company?

A. We had H&S Company and we also had -- later on we picked up 4th Truck Company.

Q. And approximately how many detainees were you normally responsible for during that time period?

A. The whole time period we had 203 detainees.

Q. And when you say "the whole time period," you're referring to that time in April when you arrived until you retrograded with the battalion?

A. Correct.

Q. Okay. When did you become aware that you were going to be required in the course of your duties as a corpsman to take care of these Iraqi detainees?

A. If I recall correctly, after we had gotten there and the MEU gave this mission to battalion, we all rotated through there, and then when the battalion aid station, the main body of the battalion moved forward, extensively -- that was about a month after we got there, that extension became mine and Petty Officer (b)(6) duties.

Q. Did you receive any training from either 2/25 or from the 15th MEU regarding the level of care that you were expected to render to those Iraqi detainees?

A. Negative.

Q. And let's -- I just want you to think about a normal week when you were at Camp Whitehorse once you became responsible for the detainees. Approximately how frequently on a normal week would you have contact with these Iraqi EPWs or detainees?

A. Pretty close to a daily basis. I might have missed a day here and there because of my duties as supply embark took me -- sometimes I would have to go down to Kuwait or travelling. We had Master Chief (b)(6) there with us and I also dealt with -- was like his duty driver too.

Q. And what was the normal purpose of those almost daily visits to the EPWs be?

A. Just check on health and welfare. If there was -- we had detainees that had ongoing medical issues, change dressings, things of that nature.

Q. During your time at Camp Whitehorse, did you ever have an occasion to render medical assistance to one of the detainees at the detaining facility?

A. Numerous times.

Q. And what kind of things were you required to administer to them?

A. Anything ranging from dressing small wounds and treating for small topical infection, splinting sprains just to get better stability and dealing with that, trying to obtain medications for the detainees that would come in and they would have -- we would try to facilitate that through the hospitals to get them -- if they had like some type of medication, try to get ahold of the Nasiriyah Hospital and obtain more of it for them. You know, anything up to -- we had one individual who had respiratory problems, administering Albuterol inhalants.

Q. How were you able to diagnose these Iraqi detainees' medical problems? Did you speak Arabic or how did that process work?

A. It was a lot of hand gestures. At one point we had an Iraqi detainee that was known as "Heavy D" who spoke English and he was very valuable in helping us.

TC: Sir, objection, relevance.

MJ: Defense?

DC: Sir, I'm laying a foundation for the care he rendered,

foundational for later on, his observations of Hatab's medical condition.

MJ: Let's move on.

DC: Yes, sir.

Questions by the defense continued:

Q. Are you familiar with the process of bringing detainees into the Camp Whitehorse Detention Facility?

A. As far as from my role in that, yes.

Q. And did you ever observe that take place?

A. Yes.

Q. Okay. How many times do you think you saw detainees getting off loaded, brought into Camp Whitehorse?

A. Probably somewhere in the area of 20, 30 times.

Q. And describe what you would observe during a typical off loading of prisoners and bringing them into the Camp Whitehorse Detention Facility.

A. Well, the facility changed. At first they would just be guarded and then they created a pen to hold them. They would be separated. Generally when they came in, they would be hooded and flex cuffed. One at a time they would be brought up, flex cuffs removed, hood removed. They'd be strip searched. At that point when they were strip searched, we would review to see if there was any obvious signs of injury and then they'd be allowed to redress, recuffed, and be hooded and taken into like an isolation area, I guess.

Q. And when you say "we," are you referring to you and the other Naval corpsman that were assigned to Camp Whitehorse in terms of when you would look at them for any kind of medical problems?

A. Yes.

Q. What kind of things were you looking for when you performed that initial observation of detainees?

A. Looking for mental status, if they seemed to be alert, able to follow direction, if they appeared to be in any type of respiratory distress, if they had any obvious signs of injury, lacerations, bruises, if they had any guarding which might detect if they had a hidden injury as they were in the pat down.

Q. Could you explain what you mean by "guarding," please?
A. "Guarding" is a term that describes when somebody has an underlying injury and is palpated, i.e. touched, and they wince or protect it. That would be indicative that there was something else going on. We would be looking for that.

Q. Did you ever observe Sergeant Pittman conducting any of the strip searches or off loading of the detainees during the time you were at Camp Whitehorse?
A. To be honest, sir, to say individuals, I probably did at one time. To say I could remember a specific incident of that, no, given the time frame that's transpired.

Q. All right. Let's talk specifically now about 3 June of 2003. Were you attached to Camp Whitehorse at that time?
A. Yes, sir.

Q. And were you present on that day for the inprocessing of a gentleman named (b)(6)?
A. Yes, sir.

Q. All right. And do you remember what time of the day his inprocessing took place?
A. It was approximately 1900.

Q. And just describe kind of the lighting conditions, natural lighting conditions outside at the time you remember (b)(6) being processed.
A. Natural lighting, it was already past dusk and we were doing it via headlights of the HMMWV.

Q. How many HMMWVs were there; do you remember?
A. I believe two.

Q. And what Marines do you recall being present at that time besides yourself?
A. There was Lance Corporal (b)(6) and I think Sergeant (b)(6).

Q. Do you recall -- well, do you know who Staff Sergeant (b)(6) is?
A. Yes.

Q. Do you recall if he was present?
A. Yes.

Q. He was present?
A. He was present. He was generally -- if I recall correctly, sir, he was down a ways writing, doing the log entries.

Q. And do you know who Major Paulus is?
A. Yes.

Q. Do you recall was Major Paulus present?
A. Yes.

Q. Besides (b)(6) did you observe any other Iraqi detainees being brought into Camp Whitehorse at that time?
A. There were two other individuals brought in at that time, sir.

Q. And at that time did you conduct a visual inspection of (b)(6) and these two other detainees?
A. Yes, sir.

Q. And let's first talk about the other two detainees. Did you notice any physical problem with those two gentlemen?
A. No, sir.

Q. Okay. And let's talk specifically about the (b)(6) observations that you had of him. When you arrived at that time during this inprocessing period, what's the first thing you noticed of (b)(6)?
A. (b)(6) was, I believe, the last individual brought up to be searched and at that time he generally displayed kind of an attitude of almost passive aggressive.

Q. I want you to define what you mean by "passive aggressive?"
A. He wouldn't follow instructions and Lance Corporal (b)(6) when through very exaggerated means where the other detainees were able to follow along relatively easily. He would not comply. He would be instructed to keep his hands against the wall. He would always bring his hands to his center and start tumbling, like rubbing his hands and not openly being aggressive but not complying.

Q. And based on your observations while you were at Camp Whitehorse, had you ever seen this kind of behavior with any other detainees?
A. No, I have not.

Q. Now, you just described some of the behaviors (b)(6) was exhibiting. When you observed this, was he wearing a sandbag on his head?

A. No. This was after the sandbag was removed and they were trying to conduct a visual inspection. Even trying to get him to disrobe was somewhat of a elaborated project. He was not following commands to disrobe.

Q. Okay. This may seem like an obvious question, but had his flex cuffs been removed at this point?

A. Yes.

Q. Did you observe the entire strip search and inspection of (b)(6) by Lance Corporal (b)(6)?

A. Yes.

Q. How long approximately did that whole process take?

A. (b)(6) took longer than the other two. The other two were done within probably no more than 5 minutes and (b)(6) was closer to 10 to 15 minutes.

Q. How far from then Lance Corporal (b)(6) were you standing while you observed him going through this process of strip searching (b)(6)?

A. Within a meter.

Q. Could you have reached out and touched him if you wanted to?

A. Yes.

MJ: Reached out and touched who?

DC: Lance Corporal (b)(6)

WIT: Yes, sir.

Questions by the defense continued:

Q. Were there any other Marines around you and Lance Corporal (b)(6) while this strip search of (b)(6) was taking place?

A. If I remember correctly, I think Sergeant (b)(6) was.

Q. Were you able to observe Sergeant (b)(6) from where you were standing?

A. He was on the other side of Lance Corporal (b)(6) so I was not able to have a clear field of view of him.

Q. But you knew he was there?
A. Yes.

Q. All right. Focussing specifically on this strip search, at any point did Lance Corporal (b)(6) have to use some kind of physical force with Mr. (b)(6)?
A. Yes.

Q. Okay. When was the first time you saw him do that?
A. When (b)(6) would not comply with keeping his hands against the wall.

Q. And describe what you saw at that point in time.
A. (b)(6) would step away from the wall, come towards Lance Corporal (b)(6) and instead of keeping his arms straight out, he would come forward and start touching or pushing back -- I guess you could say pushing back on Lance Corporal (b)(6) so Lance Corporal (b)(6) would push him back and again instruct him to put his hands against the wall.

DC: And just for the record, the witness has indicated that (b)(6) was pushing off. The witness has utilized his left hand to indicate pushing off from a wall.

MJ: I'm going to ask a couple of questions here, Captain Folk.

DC: Yes, sir.

MJ: When (b)(6) was against the wall, was he facing it or facing (b)(6)?

WIT: His back was to the wall, sir.

MJ: So, he was --

WIT: He was facing (b)(6).

MJ: All right. As opposed to standing with his back to the wall?

WIT: Correct, sir.

MJ: And his hands were supposed to be out to his side parallel to the deck?

WIT: Correct, sir.

MJ: In an outstretched manner?

WIT: Outstretched and his legs separated, sir.

MJ: Legs spread shoulder length apart?

WIT: Approximately, sir, yes, sir.

Defense.

DC: Sir, at this time we'd ask that Defense Exhibit C be admitted; the words "for identification" be deleted.

MJ: Any objection?

TC: No objection.

MJ: Do you want to publish that now or publish it later with the other marker exhibits?

DC: We'd like to publish it later, sir.

MJ: Bailiff, if you'd return Defense Exhibit C to the defense counsel. Are you done with those?

DC: Yes, sir.

MJ: Can we turn it off?

DC: Yes, sir.

MJ: Perhaps during one of the recesses before you publish that, you can make additional copies so each of the members can have one.

DC: That's our intent, sir.

MJ: Continue, please.

Questions by the defense continued:

Q. Petty Officer (b)(6) do you have testimonial immunity that you're testifying under today?

A. Yes, sir.

Q. And were you ever charged with any criminal offenses for your involvement in any portion of Camp Whitehorse?

A. No, sir.

DC: I don't have any other questions.

Thank you, sir.

MJ: Government?

TC: Yes, sir. Thank you.

CROSS-EXAMINATION

Questions by the prosecution:

Q. Good afternoon.

A. Afternoon, sir.

Q. I just want to get clarification on some of your testimony from direct.

A. Yes, sir.

Q. You're saying that you never punched (b)(6) is that what you're saying?

A. Correct, sir.

Q. You're saying you never saw Sergeant (b)(6) punch Mr. (b)(6) right?

A. Correct, sir.

Q. And you're saying you never saw Lance Corporal or PFC (b)(6) punch (b)(6)

A. Not during the indoc phase, sir, correct.

Q. Okay. Well, when did you -- did you see him punch him at any time?

A. No, sir.

Q. You said that (b)(6) was the most non-compliant prisoner with inprocessing that you've ever seen?

A. That I have witnessed, yes, sir.

Q. And you said you have witnessed 20 to 30 different inprocessings of prisoners, correct?

A. Approximately, yes, sir.

Q. Now, Captain Folk talked to you about your testimonial immunity.

A. Yes, sir.

Q. You were given that testimonial immunity right before we

A. took your deposition regarding this inquiry, right?
Correct, sir.

Q. And at that time when you were given testimonial immunity, the document indicated that your immunity was being granted by the Commanding General of Marine Corps Base, Camp Pendleton, correct?

A. I believe so, sir.

Q. Okay. At that time after you were given that testimonial immunity in order to take your deposition, you asked if we could give you testimonial immunity for the United States Attorney, correct?

A. That was a question an attorney that my command had --

DC: Sir, I'm going to object to relevance and I think the witness is now testifying as to attorney/client conversations.

MJ: Well, his conversations, he's free to waive it or not. Your objection is overruled.

Do you recall the question?

WIT: Could you please repeat it, sir?

Questions by the prosecution continued:

Q. When we arrived at the deposition, after you were given your testimonial immunity from the Commanding General, Marine Corps Base, Camp Pendleton, you asked on the record whether you could get immunity for the United States Attorney, correct?

A. Correct.

Q. As a matter of fact, you even showed up at the deposition with an attorney, correct?

A. Correct.

DC: Sir, I'm going to object to the relevance of this.

MJ: I'm sorry. What?

DC: Objection to relevance as to whether this witness showed up to his deposition with or without an attorney.

MJ: Major Francis?

TC: Sir, I'm trying to set the ground work for veracity.

MJ: For what?

TC: For the witness' veracity.

MJ: Objection's overruled.

Questions by the prosecution continued:

Q. You showed up at the deposition in New York with Lieutenant Kelly who was your attorney, correct?
A. Correct.

Q. And that was a United States Navy Lieutenant, right?
A. Correct.

Q. The other day you stated to me that you didn't want to talk to me unless your attorney, Lieutenant Kelly, could be on speaker phone listening, correct?
A. That was at the urging of my -- of Lieutenant Kelly.

Q. But is that correct?
A. Yes.

Q. And as Captain Folk correctly asked you, you've never been charged in this case, right?
A. Correct.

Q. Do you think there's anything in your testimony that you gave at the deposition or here today that implicates you in a crime?
A. No.

Q. Did you speak with the defense, Captain Folk and Mr. Tranberg yesterday?
A. Yes, I spoke with Captain Folk.

Q. And did you speak about the facts of this case?
A. My attorney was on line when we did that, yes.

Q. Okay. Prior to taking your deposition, when you saw Sergeant Pittman, you embraced him, correct?
A. When is this timeframe, sir?

Q. Prior to the deposition, just prior to the deposition.
A. Yes, sir.

Q. You embraced him?
A. Yes, sir.

Q. And this was hugging him?
A. Yes, sir.

Q. Captain Folk asked you if you'd ever witnessed Sergeant Pittman inprocess that prisoner, correct?
A. Yes, sir.

Q. He just asked you that just now in direct examination, right?
A. Yes, sir.

Q. You said that you couldn't recall any specific instances of Sergeant Pittman inprocessing prisoners?
A. I'm sure I witnessed it, but to say I couldn't specifically point to a specific time, no, I can't, but in the amount that did, given the time that has transpired, I could probably not put my finger on an exact moment in time.

Q. Yesterday one of my clerks gave you a copy of your deposition, correct?
A. Correct.

Q. Gave you a copy of your 26 June 2003 statement to NCIS?
A. Correct.

Q. And a copy of your 17 June 2003 statement to NCIS, correct?
A. Correct.

Q. Did you review those before you --
A. Yes.

Q. So, you read all of those?
A. Yes.

Q. In your 26 June statement to NCIS, you indicate that you did see Sergeant Pittman inprocess prisoners?
A. Yes. And I think I just stated that, sir, I did see him, but to exactly like dates was my understanding you were asking me at this time.

Q. You said you have seen and you can recall Sergeant Pittman striking prisoners during the inprocessing?
A. To gain compliance, yes, sir.

Q. Okay. To gain compliance from who?
A. For following instructions, sir.

Q. From non-compliant prisoners, right?
A. Yes, sir.

Q. And you said that you saw Lance Corporal (b)(6) strike non-compliant prisoners, correct?
A. Correct.

Q. And "noncompliance" meaning they don't stand up against the wall when they're told to, right?
A. Correct, sir.

Q. That they don't keep their hands up parallel to their bodies when they're told to, right?
A. Correct, sir.

Q. That they don't keep their legs spread like they're told to, right?
A. Yes, sir.

Q. And so when they wouldn't do that, you saw Sergeant Pittman punch EPWs?
A. To strike, yes, sir. It could be a punch, a slap. This was the way with Mr. Ensidino in the terminology --

Q. Well, did you see him punch an EPW with a closed fist?
A. To the shoulder to move him along, yes.

Q. In his shoulder?
A. Along the shoulder area.

Q. You said the head. What kind of strike to the head?
A. That was generally like an open handed cuff, just (indicating).

Q. So a slap to the head?
A. Yes.

Q. Did you see punches to the abdomen?
A. To the torso area, yes, sir.

Q. Where in the torso area?
A. Generally I believe abdomen, sir, if I recall.

Q. Closed fist?
A. I believe so, sir.

Q. Say again.
A. I believe so, yes, sir.

Q. Now, were these prisoners fighting Sergeant Pittman at the time?
A. They were being non-compliant. They wouldn't follow instruction.

Q. So passive resistance?
A. I guess it could be discerned that way, yes.

Q. Were they being, I mean, actually aggressive with Sergeant Pittman as far as punching him or punching at him?
A. What had trans -- when I would arrive at the detention facility, sir, is I was there for brief moments of time, so what had transpired previously I was not privy to, so what may have led up to the incidents, I cannot testify to.

Q. Well, when you saw Sergeant Pittman strike someone to the abdomen like you just described, the prisoner's hands were out?
A. They would vary. They could be out. They could be by their sides. They could be -- they were varied positions. To say per each strike, whatever strike I witnessed, the position of the person's hands I could not accurately describe at this point in time.

Q. PFC (b)(6), you saw him punch people in the abdomen as well, didn't you?
A. Yes, sir.

Q. And in the torso?
A. Yes, sir.

Q. You saw him slap people up side the head too, correct?
A. Yes, sir.

Q. And this was all during inprocessing?
A. This was inprocess -- yeah, yes, sir.

Q. You described in your statement to NCIS of 26 June that sometimes when you saw these punches delivered by Sergeant Pittman and PFC (b)(6), the EPWs would groan?
A. Um-hum.

Q. Sometimes they would stagger?

A. Yes, sir.

Q. You said in that statement you saw this happen with Sergeant Pittman and Lance Corporal (b)(6) on roughly 10 to 15 different occasions.

A. If I recall correctly, yes, sir.

Q. Was that statement the truth?

A. To the best of my knowledge, yes, sir.

Q. Now, the reason that you believe that they were striking these blows was to gain compliance from a resistant prisoner, correct?

A. Yes, sir.

Q. Passive aggressive behavior?

A. Resistant, passive aggressive, as I've stated before, sir. When I would come on this, I may not have witnessed what might have led up to this so I cannot accurately describe all --

Q. So, it's your opinion it was passive aggressive from what you saw?

A. I can only attest to what I saw with (b)(6) as passive aggressive. With the other inmates, I could not.

Q. Okay. You describe (b)(6) as being the most non-cooperative prisoner you've ever seen during indoctrination, correct?

A. Yes, sir.

Q. Yet nobody slaps him upside the head?

A. At that point, sir, I believe --

Q. Did you see anyone slap him upside the head?

A. No, sir.

Q. Punch him in the ribs?

A. No, sir.

Q. You said that when you examined the body of (b)(6) after he was -- had deceased, that you examined him and found nothing that looked like an injury to you, correct?

A. Correct, sir.

Q. And you were using a lantern of some kind?

A. It was a battery operated flourescent lamp, sir, and I

had a MAG light that I -- small AA MAG light that I used to check the reactivity of the pupils.

Q. You would agree that that lighting wasn't the best at 0045 in the morning, correct?

A. Yes, sir.

Q. When (b)(6) was in the camp, there was scuttlebutt going around as to who he was, right?

A. Yes, sir.

Q. So, you knew at the time that you had checked (b)(6) and he was deceased that he was believed to have been involved with the ambush of the 507th Maintenance Battalion?

A. Yes, sir.

Q. And you knew that was the Jessica Lynch battalion?

A. Yes, sir.

Q. And you'd heard that he had been found with a rifle that belonged to other soldiers in that battalion?

A. Yes, sir.

Q. You had learned from HM-3 (b)(6) that he had checked Mr. (b)(6) roughly around 1700 on 5 June, correct?

A. Yes, sir.

Q. After the defecation incident?

A. Yes, sir.

Q. Did HM-3 (b)(6) remain with you the entire rest of the evening?

A. To say he was by my side, no. He would be off getting chow and/or talking with some of the other Marines in the area.

Q. Were there any other calls to have to check (b)(6) prior to you finding him deceased?

A. Not that I recall, no.

Q. After you examined (b)(6) it was your belief that he had suffered a heart attack, correct?

A. That was my belief, yes, sir.

Q. You believed that because (b)(6) came back and told you that he thought (b)(6) may have suffered a mild heart attack?

A. (b)(6) may have mentioned that. I based my opinion on the fact I could see no physical means of trauma given the stress of the situation --

Q. Okay. But do you remember (b)(6) mentioning that?

A. Not specifically, no.

Q. Well, when you went out to examine (b)(6) at 0045 in the morning on 6 June and he's laying out in that reck pen and he's naked, right?

A. Correct.

Q. And when he's naked out there, you saw him covered in a film of light yellow dust, right?

A. Correct.

Q. And you took some water and you rinsed it off his face so that you could get a better look at his face, right?

A. Correct.

Q. When you saw that man laying out there naked in that pen, did that surprise you?

A. To a certain degree, but then upon my examination, I just drew from his age, physical condition, and the stress of the situation and felt that might have been a contributing factor.

MJ: You thought what?

WIT: I just drew my own conclusion, I guess, sir, as far as the man's age, his physical condition, you know, middle to older, somewhat obese, that the stress of being detained might have been too great for him.

Questions by the prosecution continued:

Q. You had heard that -- well, when (b)(6) told you about the defecation incident, did you offer to give (b)(6) any type of IV?

A. Given the fact that (b)(6) was able to orally rehydrate, we just had his orally rehydrate because to give him an IV would open up the possibility of another portal infection by penetrating his skin into the venous cavity.

Q. Well, is the typical treatment of someone who's suffering from diarrhea to leave him naked on the ground under the hot sun in over hundred degree heat?

A. I don't know how long -- when he was placed out there, sir, so I can't testify --

Q. Is that the typical treatment for diarrhea?

A. Orally rehydration is. To where they place him -- sir, I have no control over where they place an individual. Normally we would keep them inside and have them orally rehydrate.

Q. But aren't the Marines -- the Marines were relying on you as the corpsman to tell them what to do with the prisoner, right, or --

A. Yes, sir.

Q. -- to do with someone that might be ill, right?

A. Yes, sir.

Q. So, anywhere in your training as a corpsman is the treatment for diarrhea keeping someone on the bare ground naked under the sun in over hundred degree heat?

A. No, sir.

Q. You think that's just a matter of common sense?

A. I would agree so, sir.

Q. Did you inquire as to where they were keeping (b)(6) after corpsman came down to inquire -- or excuse me -- after the Marines came down to have (b)(6) come down and check him?

A. No, sir.

Q. The only time you can actually remember examining Mr. (b)(6) was that initial inprocessing, correct?

A. Correct, sir.

Q. And then when you examined him when he was dead, correct?

A. Yes, sir.

Q. Did anybody indicate to you that (b)(6) was having any trouble breathing?

A. No, sir.

Q. Or that he was moaning and groaning?

A. No, sir.

Q. Anyone indicate to you that (b)(6) had been kicked or punched in the chest?

A No, sir.

TC: Thanks. That's all I have.

Thank you, sir.

MJ: Captain Folk?

DC: Yes, sir.

REDIRECT EXAMINATION

Questions by the defense:

Q. Petty Officer (b)(6) first of all, just so we're clear, did you have any contact with (b)(6) on the 5th of June prior to finding him deceased in the recreation yard at Camp Whitehorse?

A. No, sir.

Q. And did you receive any information prior to finding him deceased at that time that caused you to believe he needed medical attention?

A. No, sir. I had just been informed that he had had a bout of diarrhea.

Q. And that was the extent of the information you received?

A. Yes, sir.

Q. All right. Now, Major Francis was discussing the statement that you made to NCIS and some of the comments in that statement.

When you saw guards applying force to the detainees, what was the purpose, in your opinion, based on your observations of why the force was applied?

TC: Objection, relevance, sir.

MJ: Overruled.

Q. Do you want me to repeat the question or do you understand?

A. Please repeat it.

Q. When you saw force applied by guards to these detainees --

MJ: I'm going to stop you, Captain Folk, and ask you to be more specific as to the circumstances because he testified he saw it many times, so you need to be more specific.

DC: Yes, sir. Thank you, sir.

Questions by the defense continued:

Q. When you saw guards applying force to the detainees during the inprocessing period, what was the purpose for that application of force?

A. From what I could discern was to get them to move through the process -- yeah, basically move through the process, I guess.

Q. What was taking place when you saw this force applied during the inprocessing? What was going on?

A. I'm sorry, sir.

Q. What were the detainees doing? What was taking place when you saw the force applied?

MJ: Again, he said he saw it many times. You need to be more specific.

Questions by the defense continued:

Q. During the inprocessing period.

A. During the inprocessing period, it was trying to get them to move along. I think it might have been also part to create a sense of dominance over the -- to allow the detainees to know these people were now in charge.

Q. When you say "move along," where were they moving from, where were they moving to?

A. From where the strip -- from the outside of the building where the strip searches were held to the inside of the detainment facilities.

Q. Where they were held permanently?

A. Yes.

Q. Okay. And were the detainees -- was there an interpreter present during these times?

A. As far as I could tell, rarely.

Q. And what Arabic words were you aware of that you heard

during this time period?

A. Just goom was the word to stand up.

Q. Anything else -- come along, get moving, anything like that?

A. No.

Q. The -- well, let me ask you about this: Major Francis asked you about having an attorney on the telephone when you talked to him. Did you and I ever have any conversations regarding this case without your attorney being on the telephone?

A. No.

Q. Can you hold on one second please, Petty Officer?

A. Yes, sir.

Q. You said you're currently an E-6; is that right?

A. Correct, sir.

Q. Okay. And based on all the observations you had at Camp Whitehorse regarding this use of force by guards --

A. Yes, sir.

Q. -- did you ever report to anybody superior to you you felt something inappropriate was taking place with regard to how force was being applied to detainees?

A. No, sir. At that time I was an E-5. I've just recently been promoted, sir.

Q. Okay. Did you ever report it to anyone?

A. No, sir.

Q. Did you feel that the use of force by the guards was appropriate?

A. Yes, sir.

TC: Objection, relevance.

MJ: Sustained. Members, you'll disregard the last answer.

DC: And -- I don't have any other questions, sir.

MJ: Major Francis?

TC: Yes, sir.

RECROSS-EXAMINATION

Questions by the prosecution:

- Q. You testified on redirect that you saw guards strike prisoners in order to create an atmosphere of dominance, correct?
- A. That's just my assumption, sir, part of gaining compliance and to, I'm assuming, gain some degree, given the limited confinement they had, only a single string of razor wire --
- Q. Okay. Dominance. So, you saw Sergeant Pittman strike an EPW that was doing nothing to -- doing nothing physically to harm him but just to teach a lesson?
- A. I wouldn't say that, sir, no.
- Q. Well, dominance, so something like a peremptory type strike?
- A. What might have transpired prior to my catching a glimpse of what Sergeant Pittman's activities was, I can't testify what might have --
- Q. All right. But your impression was that it was an act of dominance?
- A. I would not just single out Sergeant Pittman for this.
- Q. PFC (b)(6) too?
- A. Possibly, yes.
- Q. Sergeant (b)(6)
- A. In handling the guards --
- Q. Sergeant (b)(6)
- A. They all -- yes, everybody was to gain compliance --
- TC: Thank you. That's all I have.
- MJ: Captain Folk, anything else?
- DC: Sir, just briefly, sir. Thank you.

REDIRECT EXAMINATION

Questions by the defense:

- Q. The force you saw that you testified Sergeant Pittman used with regard to these detainees during inprocessing

strip search, was it similar to the force you saw all the other guards at Camp Whitehorse using in relation to these detainees?

A. Yes, sir.

DC: Okay. Thank you. I don't have any other questions.

MJ: Major Francis?

TC: No further questions.

EXAMINATION BY THE COURT

Questions by the military judge:

Q. Let me make sure I understand. You did see both (b)(6) and Sergeant Pittman strike prisoners?

A. Yes, sir.

Q. And at the time that you saw the blows struck, you did not observe any active resistance, meaning attempts to escape, fight, strike the guards or anything of that nature? Is that a correct statement?

A. I don't think it could be used as a blanket statement, sir. I mean, in some of the instances, detainees were resisting.

Q. Physically resisting, attempting to escape, attempting to flee, attempting to harm the guards?

A. From what the guards' perceptions of their activities, sir, I could not speak --

Q. I'm not talking about the guards' perceptions. I'm asking what you saw?

A. From what I saw, basically the detainee is not following instructions, dragging their feet, not doing as instructed.

Q. So they were struck for that noncompliance?

A. From what I could tell, yes, sir.

Q. And when (b)(6) was brought in, you described him as the worst of the lot in terms of his resistance.

A. As far as trying to play what I seemed to be a silly game of the deal. Other detainees might have been -- yes, he was the worst I'd say.

Q. Was he ever struck by those who were processing him?

A. Not from I saw, sir, no.

Q. And you saw detainees or prisoners struck by the guards during this inprocessing on at least 10 to 15 occasions?

A. Approximately, sir, yes.

Q. Sometimes these blows were hard enough where the prisoners would groan or stagger?

A. Yes.

MJ: Questions in light of mine, Captain Folk?

REDIRECT EXAMINATION

Questions by the defense:

Q. Petty Officer (b)(6) you've heard the word "striking." I want you to define in your own words what you mean by that.

MJ: Speak a little louder with your questions. You don't need to re-ask it, but keep your voice up.

Questions by the defense continued:

Q. Did you hear my question?

A. Please repeat, sir.

Q. Yeah. We've heard this word "strike" thrown around a little bit. I want you to define in your own words what you mean by "strike?"

A. Strike, as I viewed it, was to shove, to direct in a direction, give a -- to move along, a punch in the arm. I guess to -- an example of the type of blow that would be consistent with would be like when somebody gets promoted and you tattoo on their rank, you give them a thump in the arm. Nothing -- in reality, a lot of the blows that I witnessed, I've seen Marines over the years --

TC: Objection, relevance, sir.

MJ: Sustained.

WIT: I've seen Marines strike each other --

MJ: I sustained the objection.

WIT: I'm sorry, sir.

Questions by the defense continued:

Q. So, when you say "strike," a shove could be consider a strike?

A. That was how the NCIS agents in my second interview drew the parameters of the question for that second interview.

Q. Was that where the word "strike" in your interview came from, from the NCIS agents or from you?

A. From the NCIS agents.

Q. Okay. Well, so for the purposes of that statement, when you said you saw a guard shove a detainee, that became a guard striking the detainee?

A. Yes.

Q. Okay. And that would qualify then as a strike?

A. From what they used to outline the parameters of the question, yes.

Q. Okay. And these 15 to 20 times that you saw guards strike detainees, would that include -- some of those occasions include pushing a detainee?

A. Yes. From what the NCIS agents outlined it, it was any kind of contact that would result in being equal to a strike or blow, any contact.

Q. Okay. Did the 10 to 15 times you said you saw guards strike detainees, does that include times when you saw guards forcibly place detainees back up against the wall?

A. Yes. From what I was instructed by the NCIS agents, that type of conduct would constitute a strike.

Q. By that definition, pushing (b)(6) back up, his arms back up against the wall constitute a strike?

A. Conceivably, yes.

DC: All right. Thanks, Petty Officer.

MJ: Major Francis?

TC: Yes, sir.

RECROSS-EXAMINATION

Questions by the prosecution:

Q. In your statement to NCIS, you stated blows inflicted on EPWs included slaps, 50 percent, and punches, 50 percent. The blows are directed to the EPWs' shoulders and abdominal areas with an occasional strike to the head of the prisoners.

A. Yes, sir.

Q. A punch is balling up your fist and slugging it right into his stomach, right?

A. Yes, sir.

TC: Thanks.

MJ: Anything else, Captain Folk?

DC: No, sir.

MJ: I have no further questions.

Any questions from the members?

Looks like we have a few.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

Q. You had occasion when (b)(6) was inprocessed to see him standing up; is that correct?

A. Yes, sir.

Q. And you saw him, as I recall, when he was fully undressed?

A. Yes, sir.

Q. Were you able to make an assessment as to how tall he was?

A. Approximately 5'7", 5'8".

Q. And how much do you think he weighed?

A. Between 180, a hundred and -- 170 to 190 pounds.

Q. And about what time of the day was it when you saw Mr. (b)(6) brought in?

A. That was approximately about 1900.

Q. And did you see him again on that day after the inprocessing?

A. Just when he was taken into the detainment facility and he sat in the razor wire.

Q. Is that the last time you saw him alive?

A. Yes.

Q. What was his condition, as best you recall, when he was brought into the facility?

A. He had no obvious signs of bruising, scarring, burns; seemed to be in, as far as general physical health, no obvious signs of trauma of any way.

Q. Did he appear to have any difficulty breathing?

A. Not that I could tell, no.

Q. And did you watch him walk?

A. He seemed to be able to -- he seemed to be able to walk fine.

Q. You indicated on 10 to 15 times you witnessed during the inprocessing detainees struck by the personnel of processing; is that correct?

A. Yes, sir.

Q. Were there other officers or staff noncommissioned officers present during this inprocessing?

A. They were in the area, but to say exactly where they were, I couldn't attest. I was kind of focussed on my duties at the time, sir. I knew they were in the area. I don't know their exact locations.

Q. On these 10 to 15 times when prisoners were struck, you indicated that on some of those occasions they would groan or stagger.

A. Yes, sir.

Q. And that would be from the force of the blow, in your opinion?

A. Force of the blow, lack of balance, both; maybe a little bit of both, sir.

Q. Do you have an opinion as to whether any of these blows that were struck were hard enough to cause bruises, broken ribs, or contusions?

- A. From what I could tell, sir, possibly bruising. Broken ribs, I -- the force it takes to break ribs is pretty substantial and that I did not witness. I mean, there could be a possibility of bruising, but other than that --
- Q. A contusion is just another word for --
- A. Contusion is another word for bruise, sir.
- Q. Did you ever find the need to strike an EPW?
- A. Other than if I'm trying to treat him and like swat his hand away, if I'm trying to treat him -- when I was treating EPWs, if they'd try to -- I'd be trying to clean a wound and basically their hand, just slap their hand away, if that would constitute a blow.
- Q. Other than that, would you ever have an occasion to strike an EPW?
- A. No, sir. It would kind of be counter productive for what I'm trying to do.
- Q. Did you have occasion while you were at Camp Whitehorse to treat EPWs for medical problems?
- A. Yes, sir.
- Q. Give me an idea of the range of the problems.
- A. One individual that comes to mind is we got the call that one of them was in respiratory distress. Upon arriving at the detention facility, we found a detainee laying on his side. He was diaphoretic, which is heavily perspiring, labored breath. Upon taking the stethoscope that we had pre-staged down there, he had rales, which is a rattling of the lungs consistent with somebody that's having like an asthma attack. I went back to the main medical facility and retrieved an Albuterol inhaler. The individual understood what it was and was able to -- there's a breathing technique when they want to inhale the mist. He was able to achieve that procedure and it gave him relief. And at that point I suggested to the guards that if they wanted to have him blindfolded, instead of a bag over his head, that we just take a cravat and blindfold him in that fashion because I felt the dust from the bag, the burlap bag was aggravating his respiratory distress.
- Q. Did you treat any other detainees?
- A. Numerous, sir.

Q. Pardon me.

A. Numerous.

Q. What other types of ailments did you treat them for?

A. There would be cuts, burns, sprains, a variety, sir.

Q. Would these times that you treated them, the initial treatment, was that during the inprocessing or was it later on during their detention?

A. It would be after the initial inprocessing. If we saw something that required attention after the inprocessing, once that was completed, we would start initial treatment and then we would have follow ons with dressing changes and monitoring the situation.

Q. Did you ever have a detainee that while he was there experience a new injury?

A. No.

MJ: Have I answered all the members' questions?

Affirmative response from the members.

MJ: Are there any other questions from any member? Appears not.

Captain Folk?

DC: No other questions, sir.

MJ: Major Francis?

TC: Yes, sir.

RECROSS-EXAMINATION

Questions by the prosecution:

Q. (b)(6), when you say that you saw (b)(6) settle himself into the razor wire --

A. Yes, sir.

Q. -- he had flex cuffs on his wrists at that time, right?

A. Yes, sir.

Q. And were they in the front or the back?

A. I can't recall if they were in the front or the back, sir. I know he was flex cuffed, but --

Q. And he had a sandbag on his head, right?
A. Yes, sir.
Q. Now, sandbags can make it difficult to see, right?
A. It can impair vision, yes, sir.
TC: Thanks.
MJ: Captain Folk, anything else?
DC: No, sir.
MJ: Any other questions from any member? Appears not.
Warning or recall?
DC: No, sir.
TC: No, sir.

Major (b)(6) U.S. Marine Corps Reserve, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I'm currently a Major in the United States Marine Corps Reserve. My current unit is Marine Corps Base, Camp Pendleton, California.

Questions by the defense:

I am currently attached to Marine Corps Base. My MOS is combat engineer officer. I enlisted in 1983 and was commissioned in 1988. I've been in the Marine Corps going on 21 years now. That is active and reserve time. On December 14, 2001, I was activated and attached to 2d Battalion, 25th Marine Regiment. I was with 2/25 up until November 7 of 2003. I'm actually still on their rolls. I was on ADSW down there to Marine Air Control Group 28, so technically I still belong to 2/25. Since I've been an officer in the Marine Corps, I attended Combat Engineer Officers' Course, The Basic School, and the Reserve Amphibious Warfare School. That was a residence and nonresident. The resident was two weeks in the summer of '97 and '98.

While I was with 2d Battalion, 25 Marines, I did deploy to Iraq in

support of Operation Iraqi Freedom. I arrived in Iraq I want to say April 2, 2003. When I arrived in Iraq, my billet was H&S Company Commander. Prior to arriving in Iraq, I had been the H&S Company Commander about a year and three or four months.

After arriving in Iraq, I did become responsible for Camp Whitehorse. After the 15th MEU pulled out around the last week of April, they turned the facility over to us. Camp Whitehorse was, I want to say, the 11th Iraqi Armed Infantry Division's camp compound. It had a cyclone fence wrapping all the way around the perimeter. It was reinforced with a berm in addition to the cyclone fence. It was probably all in all just under one square kilometer. It had multiple buildings along with barracks building, building areas in all the spaces. Most of the heads were closed off. They'd been looted and vandalized.

The defense counsel put an exhibit on the projector.

Defense Exhibit D for identification is a diagram of Camp Whitehorse. The length is probably about one kilometer long, maybe about 800 meters wide. There was a detention facility located within the Camp Whitehorse area, right here within this bermed area. Initially it didn't have a berm. It is indicated on the document itself by "EPW Facility." My company headquarters was in the first section of this barracks right here in the lowest right-hand rectangle to the "ALT.LZ" box. Camp Whitehorse was essentially used Camp Whitehorse by 2/25 for the EPW facility and the logistics support site as well as supplies, motor transport. I want to say there were 65 to 70 Marines stationed at the Camp Whitehorse at any given time.

I was not only the H&S Company Commander, but I was also the Camp Commandant for Camp Whitehorse. As such, my camp commandant duties included security of the camp primarily. Additionally, if the S-4 officer was away, I filled that in his absence. Again, primary security, providing security for the convoys that went out. We had four hard-back HWMVs with machine guns. We provided security for those. Outside of the compound, there was additional Iraqi buildings further to our west that we routinely send patrols into just to make sure there was no looters and so forth so there was also an ASP close by.

The OIC of the detention facility answered to the S-3, not to me. It was a separate chain of command for that facility. I did have interaction with the OIC of the Camp Whitehorse detention facility while I was stationed there. The initial OIC was Major (b)(6). He was co-located with us. And then Major Paulus took it over when Major (b)(6) had to go off and do the battalion gunner

duties. During my time as the Camp Commandant for Camp Whitehorse, I did visit the detention facility.

Our unit started flowing in probably within three weeks of arriving at Camp Whitehorse. I want to say towards the end of April MSSG-15 turned over the running of the facility over to 2/25. The detention facility was already there. It was just a hand over from MSSG-15 to us. When that hand over from MSSG-15 to 2/25 took place, I was not provided with any guidance as to how to run that detention facility. There weren't any written SOPs or anything along those lines that was provided to 2/25 that I know of.

I have not personally received any kind of training in running an EPW detention facility while I've been in the Marine Corps. Prior to H&S Company arriving at Camp Whitehorse, I hadn't been given any advance notice that I was going to become responsible for running this detention facility. During that turn over from MSSG-15 to my H&S Company, I did not receive any guidance from MSSG-15 about the types of detainees being held at Camp Whitehorse. As the H&S Company Commander, I wasn't aware of any training that was provided to the Marines of H&S Company that dealt with running an EPW detention facility.

The decision to staff Camp Whitehorse was made within the S-3 and battalion staff. H&S Company, 2/25 was in a unique position where it was over T/O. We had more Marines than we rated and we had extra SNCOs and a few extra officers. Major (b)(6) volunteered to be the OIC and I had an extra SNCO, Staff Sergeant (b)(6) who was the initial SNCOIC. He was probably there two or three weeks and he ended up getting medevac'd home. Major (b)(6) was the OIC probably until the middle of May. He was replaced by Major Paulus. The OICs of Camp Whitehorse had collateral duties in addition to their duties as OIC. I think every third day they would go up to the Battalion COC. They'd be the watch officer up there. Paulus was my XO, so he definitely had collateral duties as my XO. And (b)(6), he had the battalion gunner position.

In the course of my duties as the Camp Commandant for Camp Whitehorse and as the H&S Company Commander, I wasn't briefed regularly by the OICs of the detention regularly in the course of my time there. If something strange or something bizarre happened in my absence, if I was at a battalion meeting or something, I would be made aware of it. They reported directly to the brig.

The berm around the Camp Whitehorse detention facility hadn't always existed. It was there before we got there and we enhanced it for security from any potential insurgents, any other Iraqis

that were still armed and out there. It was just general security for everybody. We also had a battalion of Seabees on board the station. We provided security for them as well. We had all our gear, supplies, weapons, our ASP was there. Basically, our whole logistic center was located at Camp Whitehorse.

During my time as Camp Commandant, I did observe incoming detainees at the detention facility get strip searched around three, maybe four times. If I just happened to be down there talking to Marines, checking on their welfare, I would observe it. Again, that facility was off limits. If you didn't have business down there, there was no need to be down there. The purpose behind restricting access to the detention facility was basically to provide privacy for the detainees. You know, it's not a zoo exhibit. Not everybody should be coming down there just to look to see who's there and what they're doing and so forth. It was to provide privacy for them and security for them.

I said I was down there three or four times to watch strip searches of detainees. Strip searches were performed to make sure there was no weapons, no drugs, knives, anything like that in the process. I did have an opportunity to observe Sergeant Pittman conduct those strip searches. While I observed those strip searches on those three or four occasions, I did not observe any of the guards using any kind of force during the inprocessing in regard to the detainees. There was a communication gap, of course. If the individual didn't move his hand up or something, they would lift his hand and put it up against the wall so they could search him and pat him down, but that was the extent of physical contact.

The tone that the guards set with regard to the detainees during the strip searching process was very professional, very systematic, very methodical. I did hear command voices being used by the guards during the strip search process. Command voice, to me, just is in a more authoritative tone of voice to gain attention. Anyone who hears it knows they're being instructed to do something, being commanded.

We didn't have an interpreter at Camp Whitehorse until probably towards the last week of May. That interpreter was Sergeant

(b)(6) There wasn't an interpreter assigned to the detention facility because there weren't any available initially, but I know Major Paulus and Major (b)(6) had requested an interpreter on numerous occasions. I was present at one of the battalion staff meetings when Major (b)(6) made the request to have an interpreter there. When these battalion staff meetings would take place, the company commanders, all the staff officers, battalion

sergeant major, and on occasion the first sergeants would be present. The battalion commander was generally there. Those are the individuals to whom these concerns about the interpreter were voiced. Major (b)(6) and Major Paulus wanted an interpreter assigned to the detention facility because basically you're dealing with a language barrier between the Marines and the detainees.

As the Commandant at Camp Whitehorse and the H&S Company Commander, I was aware that there was a stage in the detention facility where after the detainees arrived they would be kept awake by the guards. I was told earlier that that was a method that had been prescribed by the HET. That was a procedure that continued throughout the duration of my time as the Camp Commandant at Camp Whitehorse. I didn't believe it was anything that needed to stop.

While I was the Commandant of Camp Whitehorse, there were no inspections of the detention facility conducted by anyone. A walk through of the facility probably occurred in early May. General Wallhouser came down. It was he, myself, Major Powers, and Major (b)(6) escorted the general down. He wanted to commend everybody. During the time that General Wallhouser was at the facility, detainees were being held in the holding pens. I didn't see any strip searches going on at that time. During that time period, keeping the detainees awake possibly would have been taking place. Following that walk through inspection, I did not receive any guidance that I needed to change the way Camp Whitehorse was run. When that walk through occurred, 2/25 had been running the detention facility probably about two weeks. That would have been probably sometime in early May.

I was present at Camp Whitehorse on the 5th of June 2003. I did become aware that there was a sheik being detained at Camp Whitehorse on that day. The battalion commander had informed me the day prior that this sheik was going to be picked up and brought to our facility because we had the guards. He was supposed to be given special treatment. Special treatment was a separate holding area, whether it be a tent or whatever, a stool to sit on, bottled water, no strip search.

That initial order regarding the special treatment of the sheik changed the afternoon of the 5th. My understanding was Echo Company went and grabbed the sheik. When they did pick him up, two of his followers had opened fire.

The trial counsel objected to the last question and answer. The military judge sustained the objection.

Questions by the defense continued:

After that order regarding the sheik's treatment was to be changed, I went and got in touch with Major Paulus who was the OIC, told him this is the order from higher, that the sheik no longer gets special treatment. He's supposed to be fully processed, full strip search, and be housed with the other detainees, no stool. He can sit on the floor. He can sleep on the floor. Basically the whole process that the other detainees went through, he was to go through. Major Paulus and I both walked down to inform the guard staff. We walked down from our Headquarters to the EPW facility, which was a couple hundred meters.

Once we got to the Camp Whitehorse detention facility, as we came around, we noticed the smell of feces coming from the far holding facility. We made an inquiry of what was going on. We found out one of the detainees had defecated all over himself. Then we went over and talked to Sergeant Pittman and Lance Corporal (b)(6) who were watching the (b)(6). When we went and talked to Sergeant Pittman and Lance Corporal (b)(6) when, they were located inside this berm, there was an old Iraqi head facility that the HET used to do their interrogations in. That's where the (b)(6) was located at the time. Lance Corporal (b)(6) and Sergeant Pittman were inside with him. That building was 10 by 15, 12 by 15 maybe.

We noticed the smell and we went to talk to Sergeant Pittman and Lance Corporal (b)(6). We told them that the special treatment for the (b)(6) is to end. He's to be fully processed just as you would any or the other detainees. The processing will have to wait until we clean up this area.

Then Major Paulus and I actually went into the cell where (b)(6) was to see what was going on. When we got in that cell, Lance Corporal (b)(6) and Lance Corporal (b)(6) were in the cell. In the upper left-hand corner of the EPW facility building, (b)(6) was laying on the ground. He had defecated himself. They had one or two of the other detainees in there assisting with the clean up. (b)(6) had basically soiled himself. The issue now is we have to clean the feces up off the floor, we had to get him cleaned up, and we have to get him out of here so we can move the sheik in here.

At that point, Lance Corporal (b)(6) got (b)(6) up off the floor. Inside that barracks section, there were two holding pens. It was divided into two sections with triple strength concertina. So (b)(6) was taken out of the far section and brought into the section closest to the door. When (b)(6) was brought into that

section closest to the door. (b)(6) had him standing up. As (b)(6) walked away (b)(6) dropped himself face first into the concertina wire. I saw (b)(6) take two steps forward, dropped himself face first, brought his hands up to protect his face and body, and he went in. He was laying there in the concertina wire. (b)(6) came back around, picked him up out of the wire, pulled him up and out, turned him away from the wire so he couldn't see it, and then just went back over to assist (b)(6) and the other guy clean that far area. Again, as (b)(6) started to walk away, (b)(6) dropped himself backwards into the wire the second time. He wasn't flex cuffed at this time. He didn't have a sandbag on his head.

During this period of time when I watched (b)(6) drop himself into the wire those two times, I didn't hear him say anything. He wasn't verbalizing anything or making any noises. Sergeant (b)(6) was not in there with us at the time, but he was at the facility that day.

After the second time when (b)(6) fell into the concertina wire, Lance Corporal (b)(6) came back around and picked him up. He and (b)(6) got his clothes off. When he dropped himself in the second time, the clothes ran up his back smearing his feces all over his body, front, back, everywhere. So after they got the clothes off him, they laid him down on the deck so that he could not be afforded the opportunity to drop himself in the wire a third time.

At some point, (b)(6) body was removed from that holding cell. Lance Corporal (b)(6) dragged him out by the neck. He got him to the doorway and, at the last Article 32 it turns out, Lance Corporal (b)(6) assisted him. I only saw Lance Corporal (b)(6) drag him out through the doorway. That was the last time I saw him at that point. Lance Corporal (b)(6) had his hand on (b)(6) chin and the other hand supporting the back of the bottom of the neck, supporting his head. I did not hear (b)(6) say anything while he was being dragged out by the head.

When (b)(6) dropped himself into the wire on those two occasions, I was probably about 12 to 15 feet away from him. I was able to observe his face. He was conscious. The first time he was standing there very straight forward. He threw his head down, made the movement towards, and put himself face first into the wire. His eyes were open the second time when he did it.

Prior to being removed by Lance Corporal (b)(6) from that holding cell area, (b)(6) clothes were removed by (b)(6). He just peeled the clothes right off over top. When he was

dragged out of the room, (b)(6) was not wearing any clothes. Just his buttocks and maybe his lower leg made contact with the floor as he was being dragged out. I would describe the texture of the floor in that room as rough concrete surface, broken up, maybe a few little jagged sections.

After (b)(6) was taken out of that holding cell, they were trying to clean it as best they could with what we had. We had a couple of 5-gallon jugs of water. We had a broom. Cleaning assets were sparse. The detainees actually cleaned the room, if I'm not mistaken.

I said I was able to observe (b)(6) throughout this period of time when he fell into the concertina wire. Based on my observations, I do not believe he was in any kind of medical distress.

The holding area where (b)(6) was located when he fell into the wire on those two times had steel framed windows with painted glass. Not all the glass was in them. Again, the buildings had been ransacked before we had gotten there. So a lot of the windows had been busted out. I want to say there were either six or seven windows on each side in that detention holding area. A breeze could come through those windows. You could see through them. Despite that breeze, it was a lot hotter inside the building.

Once (b)(6) was taken out of the room, Major Paulus and I let Sergeant Pittman and Lance Corporal (b)(6) know to bring the sheik out. At this point in time, the (b)(6) was taken from that building here to the wall on the left side of the EPW holding facility building. Sergeant Pittman and Lance Corporal (b)(6) went and did a methodical strip search. They stripped him down, searched him, and reclothed him. No force was used on the (b)(6) in accomplishing that strip searching, except maybe lifting the hand up and putting it high up on the wall so they could do the pat down. There were a few Marines around while the strip search was conducted. I think Staff Sergeant (b)(6) was present. (b)(6) and (b)(6) I think, were still inside with the other EPWs. After (b)(6) was removed from the holding cell, the strip search of the (b)(6) started taking place probably within ten minutes. The strip search lasted five, ten minutes probably. The translator was present. He was just there in case the individual didn't follow a command or needed a command in Arabic. I don't recall if that need arose during the strip search of the sheik. I did not observe Lance Corporal (b)(6) or Sergeant Pittman kick, punch, or knee the sheik in this process.

After the strip search was completed, the (b)(6) is then taken into the holding area where (b)(6) was which is the room where he had previously defecated in. There aren't any other detainees in that room when the (b)(6) is taken there. Once the (b)(6) is dealt with, I go check up on (b)(6) and I brought Sergeant (b)(6) with me to check on (b)(6). On the backside of the facility, there was a reck pen and (b)(6) was in that pen. The door to that holding area where the (b)(6) is now being placed to that back reck pen where (b)(6) is located is 15 feet away. When I get to that back holding area, (b)(6) in the pen.

At the time Sergeant (b)(6) and I showed up, there were two brothers, they were just finishing washing him down to get the feces off of him. These two brothers were known as the (b)(6). They finished cleaning him off. I want to say it was Lance Corporal (b)(6) who escorted them back into the detention facility and put them back with the other detainees. Sergeant (b)(6) and I are standing right there. (b)(6) is laying on his right side at this point and rolls onto his back. His right arm was underneath him, so he rolled over onto his back. When he did this, I was 10 to 12 feet away from (b)(6). He rolls on his back, arches his left arm back and tilts his head back and says to me "hi" or "hey." From what I had determined at that time, I suspected that the individual may have been faking an illness or was passive resistant. I told him we had nothing to talk about. Sergeant (b)(6) then spoke to him in Arabic very brief, maybe five or six words. Following that conversation, he didn't indicate to me any concerns he had about (b)(6).

At some point a corpsman came to the recreation yard at the detention facility. Since (b)(6) had dropped himself into the concertina, there was a group of Marines in the immediate area. I told someone to go get a corpsman. My concern for (b)(6) was that he had cut himself. The concertina wire is pretty sharp. With all the feces on him, I wasn't able to tell if he had been cut. So we had to clean him first. When I arrived out in that back reck pen, they were just finishing cleaning up (b)(6).

During this time when (b)(6) rolled from his right side to his back, raised his hand, and arched his back and made the comment to me, I was not able to observe any kind of bruising or anything that indicated injury to me. I was present when the corpsman that I had ordered arrived, who was (b)(6). (b)(6) looked at his eyes, took his pulse, checked him for cuts. Doc (b)(6) told me that his vitals were fine. he had no cuts, and he was probably faking. I did observe (b)(6) while he was actually performing this examination of (b)(6). I watched him take his pulse and look at the man's eyes. Based on what he told me, I did not feel any

further medical attention was necessary.

At that point in time, I started to proceed back to taking care of other camp business. I still had security vehicles. We had logistic runs the next morning. I had to go assign vehicles. Before I left Camp Whitehorse at that time, Major Paulus may have given further direction to the guards at Camp Whitehorse regarding how they were supposed to deal with (b)(6). I did not provide any further guidance following this strip search and placement of the sheik in that holding cell.

While I was dealing with (b)(6) and the corpsman was present and all those things, I was just outside that wall of where the sheik was being held. We were within a few feet of the windows. There wasn't any kind of commotion going on in that room where the sheik was being kept. I could just hear the command voice of Sergeant Pittman saying goom, which is Arabic for stand up. Other than that, I didn't hear anything that caught my attention.

I started heading back up towards my office and the S-4 area. Major Paulus caught up with me. During this walk, I did receive some kind of radio transmission or some kind of alert. Just as we were about at the S-4 shop, which was across from my Headquarters Company, the radio watch said I was wanted on the phone. The subject matter of that radio call was there was a hundred Iraqi supporters of the sheik that had been reported to be on their way to Camp Whitehorse to free the sheik.

As soon as I got that word, I told Major Paulus to have everybody get all their trash, get them all mobilized. Let's get these vehicles up to the front gate and stand to 100 percent alert. From there, I just did some final coordination on the radio with the radio operator. From there, I went over grabbed my helmet, my flak jacket, and started walking up the road to the front gate. The front gate is depicted on the defense exhibit here on the far right-hand side. That was probably 500 or 600 meters away from where I was located at that time.

We moved all the vehicles outside the entrance because the machine guns on top of the vehicles wouldn't have been any good defensively from inside the berm. The purpose was let's get our defensive team out here, our security team out here. Major Paulus organized an internal reaction force while I had the security vehicles out front. Once Major Paulus had made it up to me, I dispatched him with two HMMWVs out to the main entrance from the main supply route coming across as an intercept. We made sure we did a comm check, made sure we had comm on the way out, so if they had any problems, they could fall back on my two vehicles and that

would have been our last stand right there.

My translator, Sergeant (b)(6) did arrive at my position. I called him up just in case all these Iraqis make it to our position or make it to the front gate and want to try to come in, he can explain to them that that would be unadvisable for their safety. I had walked about halfway to the entrance and then Gunny Rubio came along and picked me up and drove me up to the front. I sent a vehicle back to bring Sergeant (b)(6) up. I remained with Sergeant (b)(6) at the entrance for about an hour and a half. We were just standing by. Finally, radio watch at about 2000 came up and said the Iraqis have turned around and are not coming right now.

At that point, we reduced our defensive posture from 100 percent to 50 percent. We left two vehicles by the main entrance and brought the other two vehicles back inside the compound and continued the alert for the rest of the evening. The alert for the rest of the evening consisted of 50 percent. That alert also applied to the detention facility.

I have known Sergeant Pittman since November 2001. Since that time, 2/25 has been activated twice. The first period of activation for the bulk of the battalion was from January to December 2002. The battalion was called on active duty for op tempo relief in support of 2d Marine Division.

During that period of mobilization, our battalion was based at Camp Lejeune. That period of mobilization lasted for a year. My billet for that mobilization was H&S Company Commander. Sergeant Pittman worked for me. He was one of my armory custodians. Sergeant Pittman basically managed the largest stock of weapons in the battalion and also the maintenance of the weapons. There were other Marines working in that armory area. I had weekly contact with Sergeant Pittman during that first period of mobilization. During that time period, I did have an opportunity to observe him in the conduct of his duties as the armory custodian.

I did rely on his work for me. I did have an opportunity during that time period to give orders for things he needed to do for me. I relied on him to complete those orders. I was able to observe whether or not he completed those tasks.

During that first mobilization period when Sergeant Pittman was my armory custodian, the battalion went to the summer mountain operations course located in Bridgeport, California. Basically, everybody in the battalion went through the whole training package, every officer, every enlisted Marine, every corpsman. We

did rock climbing and so forth. In the course of that training, whenever there was down time, Sergeant Pittman took the initiative to teach machine gun handling, machine gun deployment, machine gun maintenance. My company was in the field during that training evolution. I did have an opportunity to observe Sergeant Pittman during that time period.

During that first year of mobilization, I know Sergeant Pittman worked with Major Sadowski, who was the MMO, armory officer for the battalion at the time. Sergeant Pittman was always professional towards senior officers.

During the second period of mobilization, I would see Sergeant Pittman daily. Although I didn't go down to the EPW facility, Sergeant Pittman used to come up to the Headquarters Company area to pick up chow and so forth for the Marines at the EPW facility. He was also nursing one of the detainees back to health.

The trial counsel objected to the last question and answer. The military just sustained the objection.

Questions by the defense continued:

I said I had daily observations of Sergeant Pittman. I did observe Sergeant Pittman conducting his duties as a guard during that second activation period briefly. He took care of some armory issues. I was able to observe his conduct around detainees.

During that first mobilization period, the battalion was demobilized in December of 2002. And then our battalion wasn't remobilized again until March of 2003. We're talking about two periods of observation of Sergeant Pittman during the first and second mobilization.

Based on my observations of Sergeant Pittman during these two distinct periods of mobilization, I did have an opportunity to form an opinion about his military character. It's as high as I could possible make it.

I am testifying today pursuant to a grant of testimonial immunity. I received that grant of testimonial immunity two and a half weeks ago. I am currently pending charges under the UCMJ. I received those charges on June 28 of this year.

When (b)(6) was laying in that recreation pen after he had been removed and I came out there with Sergeant (b)(6) I did not notice any bruising on his body. I was approximately 12 feet away

from him. It was still daylight out. I didn't notice any blood or any other bodily fluids on him at that point. I was able to look at his face during that time period. When he arched his left arm over, he tilted his head back, and we made eye contact. When I made eye contact with him and I was looking at his face, I did not see any cuts or bruises on his face. I had an opportunity to observe the mid section of his body from his waist to his neck at that time briefly. I wasn't going to stare at him. I did not observe any bruises on his torso. I am not aware of whether (b)(6) was ever moved from the recreation yard for the remainder of that night after he was taken out there.

When I left Camp Whitehorse's detention facility following (b)(6) being out there in the yard. I did not have any concerns for his medical condition. (b)(6) said his vitals were fine and he's probably faking.

I was aware of another situation where detainees were faking a medical condition while at Camp Whitehorse. About two and a half, three weeks prior to that, a detainee was faking an illness. He was imitating seizures, shaking, twitching, laying on the deck, unresponsive, wouldn't stand up, basically let his body limp. Neither Major Paulus or Major (b)(6) were around that day. I think it was Staff Sergeant (b)(6) came up and told me about this individual. He had already been medevac'd twice off the compound and it had been determined by Dr. (b)(6) and the local hospital that he was faking the illness. So there was an order not to medevac this guy. I had a concern. It looked serious to me. We had no corpsman immediately there at that time. Doc Schnell showed up and had him look at him.

The defense counsel offered Defense Exhibit D for identification without objection by the prosecution. Defense Exhibit D was admitted into evidence.

CROSS-EXAMINATION

Questions by the prosecution:

I actually observed Sergeant Pittman conducting inprocessing three to four times. On each of those occasions, I never saw Sergeant Pittman punch, knee, kick, or slap an EPW. PFC (b)(6) was there as well with the sheik, but I don't recall with the other three. I didn't see him punch, kick, strike, or slap an EPW for any reason. If I would have seen such a thing on an EPW that wasn't resisting physically in any way, I would not have allowed it. At the time that I saw (b)(6), I had not been given any information that he had been punched, kneed, kicked or any of those things.

I am pending an Article 32 hearing for charges. Two of those charges deal with the dragging incident of (b)(6). That's because I heard Major Paulus say to Lance Corporal (b)(6) "Drag him out by the neck" and I didn't do anything to stop it.

The only time me and Major Paulus had a conversation about (b)(6) condition was when we spoke on the way back that he was probably faking it after Doc (b)(6) had done his assessment. I don't recall Major Paulus saying that (b)(6) was using the words "why, why" in English during his indoctrination. I took a handwritten statement from Major Paulus.

I said that Sergeant (b)(6) went with me to check on (b)(6). And then after Sergeant (b)(6) was with me with (b)(6) me and Major Paulus left the detention facility. Sergeant (b)(6) did not walk with us at that time. He remained at the EPW facility.

During the time that I observed Sergeant Pittman and PFC (b)(6) strip search the (b)(6), I did not see Sergeant Pittman or PFC (b)(6) punch, knee, kick, or slap the (b)(6). If I would have seen that, I would have done something about it. I would have had them stop it immediately.

I was not actually in the holding building that (b)(6) had been dragged out of and the sheik was occupying while Pittman and (b)(6) were there.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

There was no SOP that set the criteria for how that detention facility was to be run. Major (b)(6) had drawn up a set of procedures. He had typed them up in his transition period with Major Paulus. I don't think they were ever published to the guards, but I can't say for sure. There wasn't anything that defined the term "inprocessing" that I know of. In my mind, inprocessing was the detainee comes in, he goes through the strip search, then he's taken in and goes through the program or method, whatever word you want to use, that the HET prescribed for the guards to use until such time as the HET had interviewed him. When the HET got through with him, the inprocessing stopped and he was just returned to the general population.

In this inprocessing, to include the strip search of the sheik that Sergeant Pittman and PFC (b)(6) were involved in, I never observed them strike, hit, knee, or in anyway use force on the

sheik.

Commander (b)(6) U.S. Naval Reserve, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I'm currently a commander in the United States Navy Reserve. My current unit is 4th Reconnaissance Battalion in San Antonio, Texas. I currently reside (b)(6)
(b)(6)

Questions by the civilian counsel:

My current function with the Reserve unit I'm in is as the Battalion Surgeon Officer in Charge. That means I'm a MD. I engaged in Operation Iraqi Freedom. My function there was as the Assistant Battalion Surgeon.

I went to college at Texas Tech University. I then went to Medical School also at Texas Tech University in Lubbock, Texas. After that, I did a residency in orthopedic surgery at the University of Texas Medical Branch in Galveston, Texas. Upon finishing that, I then did a one-year fellowship in spine surgery in San Antonio, Texas. Once I finished my fellowship, I then went to the National Naval Medical Center in Bethesda, Maryland, where I was on active duty until 1996. And after I finished my obligation with the Navy, then I stayed in the Reserves. I'm board certified in orthopedic surgery, spine surgery, and in underseeing hypotheric medicine. I'm licensed to practice medicine in Texas and in Florida. I am an orthopedic surgeon in
(b)(6)

I indicated I was activated for Operation Iraqi Freedom. I was the Battalion Surgeon OIC of the 4th Reconnaissance Battalion. I had two companies that got activated and in the ensuing activation with the Reserves, 2/25 was short a medical officer for the deployment. The division surgeon of the 4th Marine Division called me up and told me he picked me to fill in the spot with 2/25. So I joined up with 2/25 in Camp Lejeune in early to mid March of 2003 prior to going over to Kuwait and then to Iraq.

Initially, when we got up to Nasiriyah, we were at an Iraqi infantry headquarters staging area facility, which later became known as Whitehorse. That's where we initially set up for the

initial portion of the deployment. We moved from Camp Whitehorse down into the middle of the city in Nasiriyah into what used to be a museum, so we called it the museum. Eventually the Combat Operations Center moved there. We had the battalion headquarters and weapons company and we had the battalion aid station located there as well.

As the assistant battalion surgeon at Camp Whitehorse, my duties were to provide medical care to the Marines primarily, but also to the Iraqis if the need arose. The procedures in place as far as medical treatment of Iraqi nationals and EPWs changed over the course of time when we went from the ground combat phase to the security stabilization phase. During the ground combat phase, it was unbelievably good. It didn't matter if you were a wounded Marine, a wounded Iraqi civilian, or a wounded enemy combatant, they were all treated the same. We were able to medevac them, send them back to higher medical care, and really there were no questions asked.

Once the redeployment order came and then we switched to the security and stabilization operation, then we didn't have a higher medical care for the Iraqis, whether they be civilian or the enemy combatants as far as higher medical care other than us. For the Marines, of course, we could ship them out to higher medical care, but there was an airfield near us and they actually had an Air Force hospital. During the war, there was a cache hospital out there, which was an Army hospital, and they also took care of a lot of things and never questioned anything. They took care of everything we brought out there.

Afterwards, when the Air Force came in, we tried to take some Iraqi civilians that had gotten injured severely out there and they told us not to bring them out there. They said they were under orders not to take care of any Iraqi civilians. If we shot them by accident or on purpose or ran them over with a car, we couldn't bring them out here. Myself and Commander McKenna went out and talked to the commanding officer. He said we couldn't bring them out there. So we were then told that all the Iraqis, as far as higher medical care, needed to go back to their own medical care system.

At that time, they had the Saddam Hospital, later called the Nasiriyah Hospital, but it was a large hospital probably in name only. It was really a place to go die.

The way the Navy medicine is set up for the Marine Corps, the battalion aid station is your first level. We had the capability to do adult trauma and just basic life support measurements,

meaning start IV fluids. We don't have any blood. We could protect the airway and stop the bleeding on extremity injury, but really anything in the chest or abdomen, we can't do anything for. It's just really basic medical life saving procedures to stabilize a patient until we can get them to a higher level of care. I'm a board certified orthopedic surgeon. Commander (b)(6) is a board certified emergency room physician. You don't have that level of expertise at that level other than in the reserves. The active duty battalions do have physicians, but they're physicians that have completed an internship only.

During the early morning hours of June 6, 2003, we received a call over the radio from Whitehorse saying that one of the EPWs had died and they wanted to know what to do with the body. I informed them then just to keep the body there, put it in a body bag, and then in the morning bring it over to the museum and then we would transport it over to the city hospital where they have a morgue. I did not transport the body over. In the morning, when Commander McKenna returned, he was there when they brought the body over and he transported the body over to the Saddam Hospital in Nasiriyah. Later in the afternoon, the division came down and said they needed to do an investigation on the prisoner death and that we needed to go secure the body. At that time, myself and two Marines went over there to the morgue with the purpose of identifying the body and putting it in a secure sight. There was also a MP unit that was tasked to guard the body once we identified it and keep it under a chain of custody.

I went over to the morgue at Saddam Hospital, which is offset from the Saddam Hospital. It's basically a building. Right next to it were three large stainless steel refrigerated units that were used to store the bodies. They weren't refrigerated. They were never refrigerated the whole time I was there, but there were three large stainless steel reefers. Essentially what happened was we went over there, opened up the first reefer. Inside were several bodies at this time, which was nice because normally you would have 30 to 40 bodies in there, but there were three or four bodies in there. I went to the first body bag that was there, opened it up, looked at it. We had a picture of the Iraqi in question and it looked like him. So to make a better identification, I grabbed the body bag itself and dragged it outside onto the concrete. I received the photograph from the Marines that went with me. Apparently, they photographed everybody that came into the holding facility prior and stored those photographs. I do not know what happened to that photograph after I held it. Essentially, it was printed off a printer. So it was a piece of paper. It wasn't an actual photograph. It was a photograph that was stored digitally and then they printed it out. That piece of paper that they gave

me, which was a printed picture, I looked at it, looked at it a little better, and then I gave that piece of paper back to the Marines of 2/25. There were two sergeants out there that were actually working with the Iraqi police officers. They weren't members of HET.

I identified the body. The cooler was at about the same temperature as outside, which was probably around 120 or 130 degrees. I indicated that there were several other bodies in there. I initially opened up the body bag. The condition of the refrigeration unit was abysmal. There was dried body fluid all over the floor. I opened it up and dragged the body out. I actually dropped the body a couple times dragging it out. I had to go down this ramp to the concrete. Once we got down to the concrete, I opened up the body bag more, looked at the picture, said, "Okay. Here's the Iraqi in question." At that juncture, I zipped up the body bag again, went over to the second reefer, opened that up and there were no bodies in that particular reefer. So I put the body in there. I again drug the body by the body bag over to the second reefer, going up a ramp and into the second reefer. It was very slippery, had a lot of fluids on it. A dead body is heavier than a live body, it seems like. It kept slipping from my hand where I was dragging it. So I did drop it several times. It was me alone performing this.

The first time I dropped the body, it dropped maybe a foot, maybe two feet. I was bending over, lifting up the head and shoulders by the body bag and dragging it. It would be dead weight that would drop. I indicated that I then got it out and took it to another reefer. In the process of dragging it to the other reefer, I pulled it 20, 30 feet. It slipped from my grasp another time, and then I accidentally ran it into a ramp. The ramp is a ramp that comes down from the reefer to the concrete. Bringing it up, I accidentally ran into that steel ramp as well. So I banged it several times.

After I placed the body in the second reefer, I didn't have any further contact with that particular body. At that time they put the MP guards on it, I never saw the body again.

As part of my duties as an orthopedic surgeon, I have become familiar with rib injuries and rib fractures. I see rib fractures every week. I am familiar with the cause of rib fractures. In my opinion, it is not possible for bilateral rib fractures to occur with a single kick.

Ribs are numbered. The higher ribs, one, two, three, four, maybe five, are more difficult to injure because they're much higher up

in the body and they have some protection from your shoulder and the arm and everything else and your clavicle and all that structure up there gives it a little bit better protection than the lower ribs. Typically, when you see rib fractures, they tend to be in the lower ribs. It is possible to break a rib on one side with a hard punch. Typically you don't see the upper rib fractures except in high velocity injuries, such as motor vehicle accidents, motorcycle accidents, or some type of significant trauma, meaning a high impact injury where you have the upper ribs being injured.

CROSS-EXAMINATION

Questions by the prosecution:

I said I was grasping the body bag. I would lift the body by the body bag and lift it up to roughly around my knees. As I was pulling it, it slipped from my grasp and then would fall to the ground. Then I would pick it up again and drag it some more. It slipped out of my hands two or three times. When I was dragging the body in the body bag, the body was on its back.

In my experience as an orthopedic surgeon, you probably can't get six rib fractures in the anterior region of the chest by what I was doing. As far as rib fractures, I would agree that if someone punched someone very hard in the ribs, it could cause broken ribs, but it's not going to be bilateral.

If I had a situation where an individual had a sandbag on their head, had flex cuffs on their wrists, they were distracted because they were talking to somebody else and somebody came up and with full force and smacked that person square on their chest knocking them clear off their feet onto their back, that could cause broken ribs, but it would be highly unlikely to cause bilateral broken ribs. By "bilateral," I mean all the broken ribs on both sides at one time.

REDIRECT EXAMINATION

Questions by the civilian counsel:

Ribs can fracture postmortem and fractured ribs can hemorrhage after death as well.

EXAMINATION BY THE COURT

Questions by the military judge:

You could definitely see hemorrhage hours after death. When you get to days after death, I don't know the answer to that. Not being the expert on postmortem, being a pathologist, an educated guess would be probably anywhere from 8 to 12 hours after death that you could see hemorrhage. That would be effected by the conditions that the body was stored in. Not being the subject matter expert on this, I would say 120 degree weather would increase that time, so you could still have bleeding longer.

The court-martial recessed at 1616, 31 August 2004.

The court-martial was called to order at 0802, 1 Sept 2004.

Major (b)(6) USMCR, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am presently a major in the United States Marine Corps reserve. I am currently assigned to 2d Battalion, 25th Marines, Weapons Company. I live in (b)(6)
(b)(6)

Questions by the defense:

I am the Commanding Officer of Weapons Company. I have been with 2d Battalion 25th Marines since May of 1998. I started off as the XO of Fox Company. I became the CO of Fox Company. I was the Maintenance Management Officer for a short time. I then became Weapons Company Commander.

Prior to being attached to 2/25, I was an active duty Marine here on Camp Pendleton for four years. Then I was the XO for a recruiting station in New York. My MOS is 0302. When I am not wearing the Marine Corps uniform, I am an analyst for a hedge fund in (b)(6)

Sergeant Pittman worked for me when I was the maintenance management officer. I had a collateral duty as the ordnance officer for the battalion. He was the H&S Company custodian during the time period when 2/25 was mobilized in support of Operation Enduring Freedom from December 2001 until approximately

a year after that time. During that mobilization, we were at Camp Lejeune, North Carolina. Sergeant Pittman had accountability and maintenance of the weapons. He was responsible for over 150 M16s, fifty to sixty 9-millimeters, four 50-cals, four Mark 19s, and all the optics for H&S Company.

Sergeant Pittman didn't work directly for me. But on a daily basis, I had to go down to the armory, inspect, and see how they were doing. He did answer to me for the sight count, making sure the weapons were up. I relied on reports that Sergeant Pittman gave me regarding status of the weapons in my armory.

At the very least, I saw Sergeant Pittman four days a week, sometimes five days a week. On occasion, I did order Sergeant Pittman to complete various tasks for me. I was able to observe the manner in which he carried out my orders.

During our mobilization in Camp Lejeune, we did do a field exercise. We operated as a battalion. Sergeant Pittman was involved in the COC security.

After that initial period of mobilization for Operation Enduring Freedom, our battalion again remobilized some time in March 2003 in support of Operation Iraqi Freedom. I didn't have an opportunity to observe Sergeant Pittman during that second period of mobilization.

I have had an opportunity to observe Sergeant Pittman and his interaction with his peers, senior SNCOs, and commissioned officers. I have an opportunity to observe Sergeant Pittman's ability to adhere to military customs and courtesies. Based on my observations of Sergeant Pittman, I believe is Sergeant Pittman is an outstanding sergeant.

CROSS-EXAMINATION

Questions by the prosecution:

I have been associated with the Marine Corps a total of fourteen years. During that time, I have had an opportunity to observe numerous Marines in their conduct. I have seen many good quality Marines. I have also seen some bad Marines as well. I have seen good Marines sometimes make mistakes, and those Marines got in trouble.

Lance Corporal (b)(6) USMCR, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6). I am currently a lance corporal in the United States Marine Corps Reserve. My unit is 2d Battalion, 25th Marines. I currently live in (b)(6) (b)(6)

Questions by the defense:

I have you been attached to 2d Battalion, 25th Marines since May 14, 2001. I am an 0656, which is a small computer systems operator. I deployed with 2/25 in support of Operation Iraqi Freedom in March 2003. Prior to deploying to Iraq, we were down in Camp Lejeune for about two weeks. While at Camp Lejeune, I didn't receive any training that dealt with running a detention facility for EPWs.

I arrived in Iraq the last day of March, maybe the first day of April. Arriving in Iraq, I was assigned as a guard at the Camp Whitehorse. When I first arrived, I was put on a team that consisted of six Marines, including myself. It was explained to me that we would work 8-hour shifts, depending on how many prisoners were there at the time. If there weren't too many prisoners, the shift would be split up into two 4-hour shifts. Three guards would take one shift and three guards would take the next shift. Our duties were to basically watch over the prisoners, to make sure everything stayed in order, and to provide food, water, and the basic necessities. I didn't receive any training regarding how to execute my duties as a guard at Camp Whitehorse prior to actually assuming my position as a guard.

When I arrived at Camp Whitehorse, Major Vickers was the OIC. My staff noncommissioned officer in charge was Staff Sergeant (b)(6). Staff Sergeant (b)(6) had to go home for medical reasons. Staff Sergeant (b)(6) assumed the role as SNCOIC. A couple of months later, Major (b)(6) was replaced by Major Paulus.

I am familiar with the procedures for basically inprocessing detainees into the facility. I am familiar with the strip searching that took place during that procedure. I was able to observe the inprocessing procedure about five to ten times while at Camp Whitehorse. Sergeant Pittman was present during the inprocessing the majority of the times that I observed it.

A translator was assigned to that facility. His name was Sergeant (b)(6). Detainees were also used as translators. A member of the HET also knew Arabic very well. So he would translate for us the times that he was there. For the most part, if there was a prison that spoke English, we would try to use him to translate to the rest of the prisoners.

While at Camp Whitehorse, we were told that we could use force if we felt threatened or if they tried to escape. In terms of basic compliance, there was no standard operating procedure that we received. I have never seen Sergeant Pittman during time I was assigned to Camp Whitehorse as a guard use force with relation to a detainee. During the inprocessing, if the prisoner would step off the wall or decided to turn around without being told to do so, Sergeant Pittman would push them back against the wall, say don't turn around. If they raised their hands, he would obviously push their hands down and things of that nature.

On 3 June 2003, a prisoner named (b)(6) was brought into our detention facility. Our first contact with him was probably midnight of that night, June 4. Sergeant Pittman and Lance Corporal (b)(6) were on my shift. At that point, we had set three chairs up in the breezeway that separated two prison cells. We had the two chairs turned sideways perpendicular to the door so we could just turn our heads left or right and see both of the cells. We always made sure one rifle was pointed in towards each of the cells.

When I first guarded (b)(6) the two (b)(6) were in the front part of the divided cell and (b)(6) was in the back with barbed wire dividing them. I believe the two (b)(6) were flex cuffed and were wearing sandbags.

I didn't observe (b)(6) get punched kicked or kneed by any members of my team. I never heard Lance Corporal (b)(6) and (b)(6) having a conversation in English. I never saw Sergeant Pittman kick (b)(6) at any point during that shift. I never saw Sergeant backhand (b)(6) during that shift. I didn't hear anything during that shift that sounded like someone was getting beat up. I was about 15 to 25 meters away from (b)(6). If I got out of my chair, it would take me about 10 to 20 seconds to walk into the holding cell where (b)(6) was located. If there was no barbed wire, I would be able to walk in in five seconds. There were actually two separate strands of concertina wire between where I was sitting as a guard and where (b)(6) was located as a detainee.

Nothing stands out in my mind from what I observed of (b)(6) on

that first evening I guarded him. It was clear to me from the beginning that he probably wasn't a hundred percent healthy. He didn't look well. He seemed almost motionless at times. By the end of the shift, it was clear to me that there was something wrong with him. He would moan and groan. He was very heavy, much more obese than any prisoner we had, and he was much older also.

On the following night that I had with (b)(6) I never saw Sergeant Pittman or PFC (b)(6) strike, punch, kick, or knee (b)(6) on that shift. I never heard any conversations in English on that shift between Lance Corporal (b)(6) and (b)(6) I never saw any physical contact between Sergeant Pittman and (b)(6) on that second night.

I worked with Sergeant Pittman pretty much the whole time I was there at the jail. So by that point, it had already been almost two months. Sergeant Pittman's expressed to me that he wasn't feeling well on 4 and 5 June. He looked weak to me. He was slumped back in his seat, holding his head, looked very fatigued, and basically he didn't eat. It was very uncharacteristic. It was not his usual appearance. He was usually alert, he sat up in his chair, and did his duties like the rest of us.

CROSS-EXAMINATION

Questions by the prosecution:

I never saw PFC (b)(6) strike (b)(6). I never saw Sergeant Pittman strike (b)(6). I have never seen Sergeant Pittman kick, punch, knee, elbow, or anything. I just saw him push a detainee or block their hands away.

I have given five different statements regarding my observations of Sergeant Pittman, PFC (b)(6) and (b)(6). The first one was a handwritten statement the day that (b)(6) died on 6 June 2003. The second one occurred on 22 June 2003, which was a signed and sworn statement I gave to NCIS. I also initialled at the beginning and end of every paragraph in that statement.

I never had a conversation with Sergeant Pittman in which I told him what I put in that statement. I did talk to him either right before or right after coming back to the states.

After my 22 June 2003 statement to NCIS, I believed that there were some things that needed to be explained in that statement. So I typed my own statement to give to NCIS as an addendum to that 22 June statement. I prepared that within 24 hours of giving my first statement to NCIS. I tried to give it to NCIS the next day,

but it did not get into their hands until 22 July.

The next time I spoke to anyone about these facts is when the government came out to (b)(6) and took my deposition on June 6, 2004. I knew that there was an Article 32 investigation that was occurring regarding Sergeant Pittman and PFC (b)(6) back in January of 2004. Captain McCall never sent me a letter inviting me to testify at that Article 32.

Appellate Exhibit CXLVIII is a letter for Lance Corporal (b)(6) to attend the Article 32. I am Lance Corporal (b)(6). I never received this letter.

One of the government clerks gave me a copy of my depositions and all my previous statements. I did review those. In my 22 June statement, I indicate that I saw Lance Corporal (b)(6) kick (b)(6) like a soccer ball. I also indicated in that statement that I had seen Lance Corporal (b)(6) and Sergeant Pittman punch EPWs. When I prepared my next statement, I said that I didn't see Lance Corporal (b)(6) kick him like a soccer ball but rather I just saw him nudge (b)(6) with his foot. I also said in that next statement that I didn't see Sergeant Pittman or Lance Corporal (b)(6) punch prisoners but they used a technique called a palm strike. I also stated in that typed statement that my memory of the two nights with (b)(6) was very shaky.

My deposition was taken in May 2004. During the deposition, I was asked if I had ever seen Sergeant Pittman or Lance Corporal (b)(6) strike a prisoner. I said no. I was asked if I had ever seen them have to use physical force with a prisoner. I said no. Then I was confronted with these statements. Then at that time, I started talking about the palm strikes.

In my previous statements, I never mentioned that I thought Sergeant Pittman was ill either of those nights. But now on 6 June, a year later, I can remember that Sergeant Pittman on these two nights was ill.

One of the last memories that I have of (b)(6) is that he was on the ground groaning and moaning. In my opinion, I didn't think (b)(6) was a hundred percent in good shape. I stated at the deposition that I thought he was obviously sick. I stated that I thought he needed a better examination. I stated that I saw (b)(6) have to actually brace him to help him walk and that he was walking like an elderly lady. I didn't call for a corpsman to check him. I didn't ask Sergeant Pittman to call for a corpsman to check him. (b)(6) health was discussed during the night. Comments were made that he looked weak or there was something

wrong with him, that he wasn't right, things of that nature. I also knew at that point that he had defecated on himself prior to that. So that was a pretty good indication to me that he wasn't a hundred percent healthy.

When I was typing in that statement to clarify my previous statement to NCIS that there wasn't a punch, but rather it was a palm strike, I was actually saying it wasn't even a palm strike, it was a hard push. The fingers are curled under and they are hitting with the base of their palm in the torso area.

I don't recall being granted testimonial immunity.

EXAMINATION BY THE COURT

Questions by the military judge:

No one specifically asked me to come out and testify for the Article 32 investigation for Sergeant Pittman or Lance Corporal (b)(6). Captain McCall said that I could potentially be out there. He spoke to me and said it is a good chance that I will be out there for the Article 32. But when I never received a letter or a phone call, I figured they didn't need me. I never called him back to ask him if I was needed. No one from the defense contacted me about testifying at the Article 32.

Neither Sergeant Pittman, Lance Corporal (b)(6), nor anyone else contacted me and talked to me about testifying at the 32.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I didn't observe the inprocessing of (b)(6). I didn't see him strip searched. I wasn't present when he was moved from the holding pens when the detainees initially come in into the holding cell where we guarded him. My first observation of (b)(6) was the first time I worked the shift, which was 0001 of June 4.

Gunnery Sergeant (b)(6), USMCR, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Gunnery Sergeant (b)(6). I currently reside in New York. I am presently a gunnery sergeant in the United

States Marine Corps Reserve. I am with 2d Battalion, 25th Marines.

Questions by the defense:

My current billet with 2/25 is H&S Company Gunnery Sergeant. I have been in that position approximately five years. I have been affiliated with the unit for 23 years. I have been a scout sniper platoon commander, scout sniper platoon sergeant, and a team leader in the scout sniper platoon during my time with the unit. My MOS is an 0369. I am a police officer outside the Marine Corps.

Sergeant Pittman is a Marine in my unit. He worked in my company during our activation at Camp Lejeune 2002 during Operation Enduring Freedom. Sergeant Pittman was also a member of my company for the mobilization that took place in support of Operation Iraqi Freedom.

I believe 2/25 was activated during Desert Storm. I didn't know Sergeant Pittman during that activation.

During our first period of mobilization that took place was about year of mobilization. I saw Sergeant Pittman on a weekly basis. He was a custodian in the armory. He worked directly for me. He was assisting in the daily operation of an infantry battalion armory. During that time period, I did have occasion to give Sergeant Pittman orders as to things I needed him to do for me. Sergeant Pittman also assisted with PT sessions. He also taught classes about the weapons during field exercises.

During the time period in which my battalion was mobilized in support of Operation Iraqi Freedom, I had an opportunity to observe Sergeant Pittman in the conduct of his duties during that time period. He was assigned to the armory. He helped embark the armory. When we were there, I once again utilized his expertise in weapon systems and infantry tactics to help explain to the Marines how to properly employ weapons for our impending movement up north for convoy operations.

I saw Sergeant Pittman during Operation Iraqi Freedom weekly, including the time he was working as a guard. I have given Sergeant Pittman orders and was able to observe whether he complied and followed through on those orders. I have had an opportunity to see Sergeant Pittman interacting with junior Marines, peers, senior staff noncommissioned officers, and commissioned officers. I was able to observe his ability to follow military customs and courtesies and to observe his proper

protocols in that regard. I was able to form an opinion during that time period as to how he completed or didn't complete his duties.

I have seen Sergeant Pittman performing his duties as a guard at Camp Whitehorse half a dozen times. I was billeted at Camp Whitehorse where the H&S Company office was located.

The battalion asked for anybody with independent expertise on the handling of prisoners. Sergeant Pittman's position he held with the armory is he was a free person who could be utilized to augment this detail that was being formed. He was a readily available Marine, plus he had knowledge of handling prisoners and things like that with his civilian job.

During both periods of mobilization, I did have an opportunity to observe Sergeant Pittman's work ethic in his various billets. Based on all my observations of Sergeant Pittman during Operation Enduring Freedom from 2001 and 2002 and Operation Iraqi Freedom in 2003, I have been able to form an opinion of Sergeant Pittman's overall military character. He is an excellent Marine.

CROSS-EXAMINATION

Questions by the prosecution:

I have been associated with the Marine Corps for approximately 23 years. Good military character is someone who lives up to the ethos of the Marine Corps, someone who is responsible in his billet.

I deployed in support of Operation Iraqi Freedom in the March 2003 with 2/25. I was located at Camp Whitehorse during a certain period of that deployment. I never did hit, strike, or punch an EPW. I never had to physically handle any of the EPWs. Depending on the circumstance, a Marine with good military character could punch, strike, or hit an EPW. If an EPW was sand-bagged and flex cuffed, a Marine with good military character wouldn't strike and EPW.

In my 23 years of experience, I have had an opportunity to observe a wide variety of Marines. Some were very good Marines. Some were very bad Marines. I have seen good Marines sometimes do things that shocked me.

Sergeant (b)(6) USMC, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Sergeant (b)(6) I am currently a sergeant in United States Marine Corps. My unit is 3d Battalion, 2nd Marines.

Questions by the defense:

I am a squad leader with 3/2. I am an 0311. I was recently deployed with 3/2. I did four years in the Marine Corps. Then I got out in 2001. (b)(6)

I was trying to get back in the Marine Corps. 2/25 got mobilized in 2002. I knew the recruiter at that station at that time. He called me up and said this unit got mobilized, if I would like to come down to this unit for a year, then try to go back on active duty from there.

I did. I came down with 2/25. They got demobilized. I started dealing back with the recruiter to get back on active duty. I had a hard time with the process. 2/25 got mobilized again to go to Iraq. I called up Major (b)(6), and he brought me back with him. I deployed with 2/25 in support of Operation Iraqi Freedom. I was attached to H&S Company.

During my second mobilization with 2/25, there about a two week period where I received some training prior to leaving for the Gulf. None of that training detailed how to run a detention facility.

Upon arriving in Iraq, I became assigned to work at the Camp Whitehorse detention facility. We took over running the detention facility from the 15th MEU. Myself and Staff Sergeant (b)(6) were the were the first two Marines from 2/25 that became part of the Whitehorse detention facility. When I first arrived at the Camp Whitehorse detention facility, the 15th MEU didn't provide any type of training regarding how to run the facility. They just told us to come watch how they conduct their business. 2/25 did not provide us with any written guidance on how to run the Camp Whitehorse detention facility.

When that facility was turned over from the 15th MEU to me and Staff Sergeant (b)(6) the detainees held at Camp Whitehorse were EPWs.

When we first took over, and once we got a prisoner in, we would process them and put them in the cell and give them water and an MRE and just let them be. When the HET would show up, they told us our process wasn't working because we have been too relaxed with the EPWs. When they try to interrogate them, they weren't getting any kind of information. So they told us not to give them anything until they get there. We pretty much have them stand up, don't let them get any sleep, or anything like that. If they needed water, we would just give them a little bit of water. We were also told to keep them awake until a team arrived. The HET wanted them to be tired and restless so they can gather the information. We took orders from a HET because that is who we thought we were working for.

Defense Exhibit A is a copy of a logbook. I recognize it because most of it is my handwriting. We pretty much started this logbook. I put my name in the logbook so if anybody looked at the logbook and had some questions, they could come see me. I left Camp Whitehorse around May 18 to go on emergency leave. My last entry in the logbook is dated 030517.

I have seen Sergeant Pittman inprocess 40 percent of the detainees brought to the facility. On one occasion, there was an EPW that grabbed Sergeant Pittman's knife while he was trying to cut the flex cuffs off. Sergeant Pittman gave him a soft blow because he didn't want him to cut his hands. My billet was just another Marine in charge of providing guard.

CROSS-EXAMINATION

Questions by the prosecution:

I left Camp Whitehorse on May 18, 2003. I returned back to Camp Whitehorse around 8 or 9 June. I never guarded a prisoner by the name of (b)(6). I wasn't even there when that individual was a prisoner.

EXAMINATION BY THE COURT

Questions by the military judge:

The HET members wanted us to keep the prisoners up on their feet until they got a chance to interview them. We weren't given any directions on what type of actions we could take to keep them on their feet. They wanted them to be flex cuffed and bagged until they got there too. I participated in keeping prisoners on their feet. If a prisoner would sit down, I would just pick them up. I would use the word goom really loud so they could be scared. The

majority of the time, they all listened. We didn't have a really hard time dealing with stuff like that.

RECROSS-EXAMINATION

Questions by the prosecution:

I never kneed or punched an EPW to get them up. Sometimes when they were sleeping, we would just give them a tap in the morning or whatever to get them up. No one on my shift kneed someone to get them up.

Lieutenant Colonel (b)(6) USMCR, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I am currently a lieutenant colonel in the United States Marine Corps Reserve. I am currently the Peacetime/Wartime Support Team Officer in Charge at (b)(6)
(b)(6) I am indirectly part of 2/25. I currently reside in (b)(6)

Questions by the defense:

I have been with 2/25 over 10 1/2 years. Starting out in February 1994, I was a rifle platoon commander. Since that time, I have been the Weapons Platoon commander, Rifle Company executive officer, Rifle Company commander, battalion S-3, and battalion executive officer. I then went to the PWST. During that time, I was command selected to come back to 2/25 as the commanding officer. That took place on September 11. I was the battalion executive officer for 2/25 from January of 2003 through approximately November, December of 2003. In the civilian world, I am an attorney.

Our Battalion was mobilized on March 8 of 2003. On March 12, 2003, we actually left our reserve training centers and headed down to Camp Lejeune. There were a couple of months leading up to that where we had gotten indications that we were going to be recalled.

The period at Camp Lejeune was basically for refresher training the unit could do prior to getting out the door as well as the logistics and pre-deployment types of things. During that two weeks our battalion was at Camp Lejeune, there was training given

regarding EPW handling. It was a basic block of EPW handling that the battalion mandated for all the troops as well as some other mandatory training. The EPW training or handling was essentially focussed at what we as Marines infantry expect to do, which is handling the EPWs and detainees within the five S's and a T type scenario. Just very basically dealing with them, processing them, and getting them out of our hair. There was no training provided to us that dealt with enemy prisoner of war detention facilities. The training that was conducted was on a company level. Once our battalion actually arrived in the gulf, we had a week for refresher training. We were getting used to the gear, and things of that nature.

In the early April timeframe, we received an order from the 15th MEU, which was going to be our higher headquarters, to be prepared to hold EPWs awaiting transport to IMEF facilities. Withing one to two days, we actually put that into practice. The 15th MEU didn't provide 2/25 with any written guidance regarding the operation of that facility. We were told we would be getting subject matter experts. They not only were not provided, but we were turned down in our request to receive them.

The extent of training our guards received was the equivalent of OJT for the detail that was going to actually fulfill that task at the detention facility. In other words, they just rounded up individuals from within H&S Company, possibly within Weapons Company. I would say Camp Whitehorse was not staffed with an adequate number of Marines to run the detention facility.

I had an opportunity to observe a detainee getting strip searched and inprocessed. Sergeant Pittman was conducting the inprocessing. It was a thorough, professional search of an individual. He was placed up against the wall. Sergeant Pittman was nothing but professional throughout it. He had the individual remove his clothing. He had the individual appropriately checked as needed. Then the individual was basically given his clothes back, directed to put his clothes back on, and then he was moved along to the next station or physically into the compound where he was held.

To my knowledge, our battalion never directed any specific procedures to be implemented or utilized by the guards at the detention facility at Camp Whitehorse.

I met Lance Corporal (b)(6) shortly after we deployed to Iraq. Lance Corporal (b)(6) was an administrative clerk. He was joined to H&S Company either right when we were leaving Camp Lejeune or right when we arrived in Iraq. Initially, I saw him daily. Lance

Corporal (b)(6) often accompanied me in my vehicle as convoy security leaving our Camp Whitehorse compound and going to An Nasiriyah.

I had numerous conversations with PFC (b)(6) over in Iraq. At the end of the deployment and the incident with (b)(6) came up, I had numerous conversations with him, heart-to-heart type things. Based on my observations and interactions with PFC (b)(6) while I was deployed in support of Operation Iraqi Freedom, my opinion is he is someone that tends towards untruthfulness.

Our battalion had captured a (b)(6). He was taken to Camp Whitehorse.

There was a relevance objection by the trial counsel, sustained by the military judge.

Questions by the defense continued:

I gave an order to change the sheik's treatment at the detention facility. Following that change in his treatment, he was released back to wherever he lived within one to two days after being brought into Camp Whitehorse. While the sheik was detained at Camp Whitehorse, I became aware that my battalion was being attacked by his followers.

The sheik's release took place the day following the potential attack by his followers.

There was a relevance objection by the trial counsel, sustained by the military judge.

Questions by the defense continued:

While I was the battalion executive officer at 2/25, I did not receive any guidance from higher with regard to how to treat EPWs or how to handle the EPWs at the Camp Whitehorse detention facility.

There was a hearsay and relevance objection by the trial counsel, sustained by the military judge.

Questions by the defense continued:

There were no changes made in the procedures at Camp Whitehorse.

Sergeant Pittman joined our unit in the 2000, 2001 timeframe. I was the Battalion S-3 at the time. He joined the unit with Weapon's Company. During our first period of mobilization,

because the armory was in dire straights, Sergeant Pittman was detailed to the armory to basically square away the weapons there, especially the machine guns. I probably saw him on a weekly basis. I observed him from December 2001 approximately until December 2002 approximately.

I observed Sergeant Pittman during our mobilization in support of Operation Iraqi Freedom from March 2003 until August 2003. I would you see him daily, and sometimes a couple times a week. After the (b)(6) incident, I probably saw him on a daily basis for or a couple times a week at least.

During the time that I saw Sergeant Pittman during Operation Iraqi Freedom, I was aware of what his duties were during that time period. I have been able to observe his ability to follow orders and had to rely on Sergeant Pittman. I have also formed an opinion of Sergeant Pittman's military character. He is an outstanding NCO.

CROSS-EXAMINATION

Questions by the prosecution:

When I observed Sergeant Pittman do a strip search, I did not see Sergeant Pittman or anybody else punch, knee, or kick an EPW. If I would have seen that, I would you have done something about it. If it was reasonable force needed to get someone to comply, I would have probably said nothing about it. On the other hand, if the individual was complying, was stripping down, etc., and it was an unnecessary or unprovoked kick, punch, etc., then that Marine would have been taken aside and basically told that that was unacceptable behavior. Unprovoked strikes are inappropriate.

Back at Camp Lejeune, Major Paulus gave an EPW handling class.

Sergeant Pittman was selected to work at the detention facility because of his background as a federal corrections officer. We wanted Marines with his type of background so we could rely upon their experience in order to handle these prisoners. I was trusting Sergeant Pittman, when he was down there at the facility, to do the right thing. Sergeant Pittman's OIC and SNCOIC did not have a corrections background or even law enforcement.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

During the early June 2003 timeframe, I was the executive officer of 2/25. I was familiar with Sergeant Pittman's assignment to the detention facility. His chain of command was from Sergeant Pittman to the Camp Whitehorse Staff Sergeant (b)(6). He left that capacity shortly after taking it. He was replaced by Staff Sergeant (b)(6) as the SNCOIC. Above both of those individuals was an OIC. First that was Major Vickers. In late May or the first day of June or so, it was Major Paulus. The next was the H&S Company Commander, Major Froeder. The next level up would be the battalion staff. The layers of reporting would be the S-3 shop, Major Powers, I was the executive officer, then the CO, Lieutenant Colonel Murphy. Another indirect layer there was the S-2, Major Hughes. Major Hughes was involved operations with the facility because he was involved in the questioning of any EPWs and detainees that came through.

If Sergeant Pittman had an issue, he would go first to Staff Sergeant (b)(6), then to Major Paulus, then he would probably go to his company gunny, Gunnery Sergeant (b)(6) and his company first sergeant, First Sergeant (b)(6), and then to Major (b)(6).

While I was out there working at Camp Whitehorse, I did receive requests for supplies. I was aware of requests for flex cuffs, needing personnel in handling and taking detainees from us, concertina wire, sandbags to fortify the area, things along those lines. I don't recall requests for clothing or anything like that. I know that the requests for additional personnel and additional support were not granted. We were able to get concertina wire and any of the logistical things to fortify the area.

We didn't receive any direction from higher authorities on how to run the detention camp. We never received any direction on what to do with the detainees when they were first received at the camp. The 15th MEU HET provided direction as to what they expected in terms of treatment of a detainee when they first arrived. They basically wanted to set their questioning up for success by having the EPWs or detainees tired out, more amenable to speaking, sort of a good cop, bad cop. They conveyed to our Marines that they were not to give any water or chow to these individuals until HET arrived. This is when the 50/10 was passed on to our individuals.

As I understood it, the 50/10 was essentially an EPW or detainee was to stand for approximately 50 minutes and then would be allowed to sit, lay down, or sleep for ten minutes. This process was to be repeated until HET arrived. I didn't hear anything directly or indirectly in terms of how they would physically lift up an individual who was fatigued or whatever. The guards were allowed to use reasonable force or appropriate force to get somebody to comply or to safeguard the other inmates and guards.

If the detainee wouldn't get up, reasonable force would be physically lifting the individual up to his feet, nudging him with your foot. Kneeing a prisoner or striking the prisoner with hard blows would not be reasonable. I know for a fact that Major Vickers did speak frequently with the Marines about the use of force and use of appropriate force. I didn't witness these conversations.

There was an objection to a defense photograph by the trial counsel. Sergeant (b)(6) was called to lay a foundation for the photograph. Upon hearing the witnesses testimony, the military judge sustained the government objection and would not allow the photograph into evidence, stating it wasn't relevant for any issue before the court. The photograph was marked as Appellate Exhibit CLIV.

A stipulation of expected testimony for Staff Sergeant (b)(6) Appellate Exhibit CLIII, was read to the members.

Sergeant (b)(6) USMC, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Sergeant (b)(6) I am currently on active duty. I am attached to 2d Battalion, 25 Marines.

Questions by the defense:

My MOS is 0121, personnel chief. I deployed in support of Operation Iraqi Freedom. We went to Camp Lejeune on March 20, then we left March 31 to Kuwait. While in Iraq, I didn't receive any training in the handling of EPWs. As soon as we arrived, we were told we were going to work as guards for the EPWs at Camp Whitehorse. I never viewed an SOP in the handling of EPWs while at Camp Whitehorse. I arrived at Camp Whitehorse around April 7, 2003. I departed Camp Whitehorse around June 15.

While we worked as guards for the EPWs, we worked in teams. At the beginning, my team consisted of Lance Corporal (b)(6) and Corporal (b)(6). My team was later changed to Lance Corporal (b)(6) and Lance Corporal (b)(6).

I am familiar with the inprocessing procedure. As soon as the EPW comes in, we would put them on the wall and strip search them. I have seen Sergeant Pittman inprocess detainees a few times. I have never seen him hit, punch, or strike an EPW or detainee. I recall June 3, 2003, the day that (b)(6) and (b)(6) brothers arrived at Camp Whitehorse. It was my day off, but I went in just to give them a hand.

When we got (b)(6) out of the HMMWV, we Did not drop him on the ground. We then walked him to the wall where we strip searched him. My duties during the strip search of (b)(6) was to provide security with my M-16.

PFC (b)(6) was conducting the strip search. (b)(6) came off the wall. PFC (b)(6) put his hands on him and said do not come off the wall. So (b)(6) grabbed his finger. I slapped his hand down and I told him not to do that. That was it. PFC (b)(6) put him on the wall and continued trying to strip search him. I didn't punch (b)(6). I didn't beat (b)(6) in such a fashion that he went to the ground. I didn't see Doc (b)(6) punch (b)(6) in any fashion. I never saw (b)(6) go to the ground.

After (b)(6) was strip searched, he went inside the main area. I never saw (b)(6) escape his flex cuffs. The people present for the search of (b)(6) was (b)(6) PFC (b)(6) Staff Sergeant (b)(6) Major Paulus, and other marines. I can't recall everybody that was there. The next time I saw (b)(6) was the next day. He was just laying there. Nothing unusual happened with regards to (b)(6) on that day, 4 June.

Our camp was going to receive a high profile visitor, a (b)(6). I didn't have any involvement with the (b)(6). In preparation for the (b)(6) arrival, I had to clean the room he was going to be staying. I wasn't actually in that room with the (b)(6) at any given time. I only saw the (b)(6) one time very briefly. When we were on our way to take our positions on the berm in preparation for the attack by the (b)(6) followers, I saw the (b)(6) in the cell that (b)(6) had been in. I didn't punch, kick, or hit the sheik in any manner. I didn't see Sergeant Pittman hit, punch, or kick the (b)(6).

I am testifying today under a grant of immunity. I have previously had an NJP in 1998 or 1999. The unit diary chief had

put some promotion points in the system for himself. I was the personnel chief. I am supposed to be in charge of everything. They said I knew and let him do that.

CROSS-EXAMINATION

Questions by the prosecution:

When I was helping the inprocessing of (b)(6) I was holding a weapon at that time. That weapon was in condition four. There was no round in the chamber. I am not sure how a condition four weapon is going to help us. My magazine was in my cargo pocket. I have never punched an EPW.

The NJP I had was an integrity related offense. It was not my fault. The Marine came and testified on my behalf and said I was on leave when he did what he did. I was found guilty at NJP for an integrity related offense. I don't know anything about that unit diary entry. I was falsely accused.

Sergeant G. P. Pittman, the accused, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the defense:

In March 2003, I deployed in support of Operation Iraqi Freedom. I was attached to H&S Company, 2d Battalion, 25th Marines when I was activated. I was the armory custodian.

When I first arrived to Camp Whitehorse, I believe it was April 2. I was actually assigned to the security team because I was the most knowledgeable person with a machine gun.

I eventually reported to the detention facility. I had no previous training insofar as handling detainees or EPWs. There wasn't an SOP in place for the handling EPWs at Camp Whitehorse. I was just a regular guard, guarding the EPWs.

When I reported to Camp Whitehorse detention facility, Staff Sergeant (b)(6) was the SNCOIC. Staff Sergeant (b)(6) eventually took over as the SNCOIC. The OIC of that facility was Major Vickers. Major Paulus eventually took over as the OIC.

The facility we were living in were the same as what the EPWs were living in. There was no running water. At first, we didn't have any lights. Eventually, the Seabees moved in. We got them to rig

up some lights.

I was involved in the inprocessing. The purpose of a pat search is to find weapons, drugs, something that could harm me, a fellow Marine, himself, or another prisoner. You can also tell if he has injuries during a pat search. A pat search would require me to put my hands on the EPW.

Communication was a problem with these EPWs. We just had to use arm gestures. If an EPW came off the wall during a search, we used a command voice. Even if they don't understand English, he knows that voice is some kind of authoritarian. I ended up searching about a hundred EPWs. A total of 203 EPWs came through the camp while I was there. I worked at the detention facility from April 8 to June 15.

In the course of getting a detainee to do what I wanted them to do, it did become necessary for me to use my feet. You can't do a thorough pat search with the prisoner's feet together. I would take my feet and kick both his feet and spread his legs.

There were a few times at Camp Whitehorse where I had to defend myself from a detainee. When I cut the restraints off a detainee's arm, he grabbed my KA-Bar and wouldn't let go. I looked back at Major (b)(6) and said, Sir, he won't let go of my knife. I hit him on his forearm. I twisted his wrist, and he let go.

On another occasion, an EPW was high on drugs or something. As I did the search, he took all his clothes off. I bent down to get his shoes to make sure there was nothing hidden in them. He grabbed me and picked me up about a foot off the floor. He dumped me on my back. I still have a scar on my back where I ran into the wire cages in the back. I think it was Lance Corporal (b)(6) and somebody else who jumped in and restrained him to keep him from jumping up on top of me.

On 3 June 2003, I was in the rack recovering from An Nasirivah diarrhea stuff. I was sleeping when Staff Sergeant (b)(6) told me he needed me because three EPWs had arrived. I later learned one was named (b)(6). The other two were known as the (b)(6).

I did not see (b)(6) get strip searched. I did not strip search or pat down the (b)(6). While (b)(6) and the (b)(6) were being strip searched, I was inside the holding cell partitioning the cages off. I helped escort the (b)(6) into the cell. After that, I went back to my

rack.

I never saw anybody strike (b)(6). I didn't see (b)(6) escape his flex cuffs. The next time I saw (b)(6) was on June 4 from 0400 to 0800. My team consisted of Lance Corporal (b)(6) and Lance Corporal (b)(6). (b)(6) was in the back laying down. I did not see PFC (b)(6) go into that cell and apply any pressure points to (b)(6). I did not see PFC (b)(6) attempt to lift (b)(6) up. (b)(6) was flex cuffed. I am not sure if he had a sandbag on his head.

PFC (b)(6) indicated that (b)(6) was not getting up. I told PFC (b)(6) to let him lay there and let the HET deal with him. The only thing we had to do is make sure he don't hurt himself, another prisoner, and nobody escaped.

The 50/10 situation was a pain for our Marines. I have lifted detainees up if they wouldn't respond to my commands. I picked them up by the armpit.

During my June 4 shift, I think my temperature was about 108. One of the corpsman said it was normal for being in Iraq. I also had that diarrhea stuff, which I had twice while I was there. I didn't have to get an IV because I drank water all the time. The next morning, I stumbled down to BAS to get pills for the diarrhea. (b)(6) never come to me and indicate that (b)(6) needed to see a doc. Lance Corporal (b)(6) said that (b)(6) looked tired, just laying there, and looks like he might need medical attention. I said as soon as the morning report goes out, we would get the doc to come back up. After I got off shift on June 4, I went to BAS to get more medicine and went back to my rack.

I never saw PFC (b)(6) grab (b)(6) by the neck out in the reek yard. During that shift, 04 to 08, I never went in there and kicked (b)(6) in the chest. I never went in there and backhanded (b)(6). I never engaged in a conversation in English with him. I never heard PFC (b)(6) engage in a conversation in English with him.

The next time I recall having contact with (b)(6) was my next shift on June 5, midnight to 0400. I had no interaction with (b)(6). I didn't notice anything unusual with (b)(6) on that shift. He was sleeping. The count for EPWs at this time was 17. I never saw (b)(6) after I got off that morning at 0400. I never saw anybody kick or hit (b)(6) on that second shift on the 5th.

I recall a high profile visitor coming into Camp Whitehorse around 5 June. I was told I needed to watch him until the S-2 Marines came to take over. When I was alone with the sheik, I never hit or kicked him. I never touched him in any form or fashion.

I was told the sheik followers shot at our sniper Marines or something like that. So we were told to strip search the sheik. There was nothing unusual about that strip search. I didn't see anyone strike, kick, or knee the sheik. After the sheik was in his cell, I started putting people around the berms and on the roof.

CROSS-EXAMINATION

Questions by the prosecution:

(b)(6)

years old. I was [redacted] when I was in Iraq. My ribbons are from active duty time in the Marine Corps and active duty time in the Army. I went through boot camp both in the Army and in the Marine Corps. I have received basic classes on the law of war. I know from my experience as a United States Marine that I have to treat EPWs humanely. I know I have to protect them against violence. I know I can't just go off and hit them because I want to teach them a lesson.

I am a federal prison guard in my civilian occupation. I know I can't hit a prisoner to teach them a lesson. I know I can't abuse a prisoner for the circumstances that he was captured. When I was a guard at the Camp Whitehorse detention facility, I never punched or kneed a detainee or enemy prisoner of war.

PFC (b)(6) was my direct subordinate. I was in charge of him. If PFC (b)(6) did something that I condone, then I am responsible for it.

I heard Lance Corporal (b)(6) testimony. Lance Corporal (b)(6) talked about two times that he saw me grab prisoners by the legs and yank them off HMMWVs and the EPW landing on his butt. He was mistaken about that. That didn't happen.

At HM1 (b)(6) deposition, him and I embraced before the deposition started. I heard HM1 (b)(6) testify here in court. I heard HM1 (b)(6) say that he saw me double up a fist and punch and EPW right in the stomach. That didn't happen the way he said it did. I remember HM1 (b)(6) say the blows were so forceful that it caused the detainees to stagger. I never hit someone hard enough to cause them to stagger. When Doc (b)(6) was out here for this trial,

I never went to lunch or socialized with him at all.

I heard Staff Sergeant (b)(6) testify. I don't remember him say that during this 50/10 procedure that he saw me punch an EPW in the leg to get him up. I never punched an EPW, I just used minimal force.

Sergeant (b)(6) talked about this conversation he had with me regarding the Geneva Convention. We had a conversation but not a conversation on the Geneva Convention. I heard Sergeant (b)(6) say he walked in on me and (b)(6) when we were guarding the sheik. I remember him saying he saw the both of us knee the sheik inside the holding cell. That never happened.

The detention facility closed up on 15 June. Sergeant (b)(6) showed up at the detention facility on 4 June. He was there for no longer than 11 days. Before that, I had never seen Sergeant (b)(6) in my life. After the NCIS investigation, I think the next time I saw him was at his deposition.

When I saw (b)(6) in the cell that very first night I was guarding him on 4 June, he was laying down. (b)(6) was wearing flex cuffs on his wrist. I can't remember if he was wearing a sandbag on his head. Once I say goom, goom, goom, and they don't get up, I told my shift to just let them lay there and let the HET deal with them when they come.

I believe I had a 108-degree temperature. It was 100 degrees outside. The corpsman said I had a slight fever and diarrhea. After my shift, I walked to the makeshift BAS at Camp Whitehorse. With my 108-degree fever, I was still cognizant enough to keep count of the prisoners.

REDIRECT EXAMINATION

Questions by the defense:

I saw the doc the first time I caught diarrhea. The next time I caught it, I didn't even bother going to the doc.

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

I first met PFC (b)(6) was at the armory in Camp Lejeune. The first time we worked together was at Camp Whitehorse. He got assigned to my security team. We had an outstanding relationship. We talked about family, our kids, business, and home stuff. We had a

similar background in that we were both correctional officers. The last time I worked with him was in Kuwait during the investigation. I never have any disagreements with PFC (b)(6). I think the reason PFC (b)(6) would say I kicked (b)(6) in the chest is because he knew he was the only one that did something wrong. He was trying to take the heat off of himself. I guess he threw it on me.

Myself and Doc (b)(6) always had a good relationship while in Iraq. I never had a disagreement with him on anything. I have no clue why he testified that he saw me strike between 10 or 15 prisoners.

There weren't any guards there that I had a particular disagreement with. We all got along fairly well.

While I was serving at Camp Whitehorse detention facility, I believe it was my duty to correct and report any prisoner abuse that I might see. I never saw any prisoners abused.

I was informed that I had been charged with an offense relating to the Camp Whitehorse detention facility three months after we left Iraq and returned to Camp Pendleton. We rotated back from Iraq around July 31 or August 1, 2003. PFC (b)(6) initially disclosed my alleged involvement in the kicking of (b)(6) just before the Article 32 hearing.

I didn't assist during the inprocessing of (b)(6). I assisted getting him out of the HMMWV. After that, I left. I didn't know about (b)(6) involvement in the ambush of the 507th. I just looked at it as we had more prisoners coming in. I didn't treat (b)(6) or the Slim Jims any differently than I did any other detainees.

RECROSS-EXAMINATION

Questions by the prosecution:

I was served with my charges on 16 October 2003. My Article 32 hearing occurred at the end of January 2004.

The defense had nothing further to present and rested.

The trial counsel didn't have a case in rebuttal.

The military judge and counsel for both sides discussed the instructions to be given to the members as to findings.

The findings worksheet was marked as Appellate Exhibit CLX.

The members reentered the courtroom.

The government presented argument on findings.

The defense presented argument on findings.

The government presented closing argument.

The military judge instructed the members in accordance with R.C.M. 920, including the elements of each offense, the presumption of innocence, reasonable doubt, and burden of proof as required by Article 51(c), and on the procedures for voting on the findings worksheet. There were no objections to the instructions or requests for additional instructions.

The findings worksheet was published to the members.

The court-martial closed for deliberations on findings at 1420 on 2 September 2004.

The court-martial opened at 1854 on 2 September 2004.

The President announced the following findings:

To Specification 1 of Charge I:	Guilty;
To Specification 2 of Charge I:	Not Guilty;
Of Charge I:	Guilty.
To Specification 1 of Charge II:	Guilty;
To Specification 2 of Charge II:	Not Guilty;
of Charge II:	Guilty.

The members withdrew from the courtroom and the 39(a) session was called to order.

The military judge advised the accused of his right to present matters in extenuation and mitigation, including his right to make a sworn or an unsworn statement or to remain silent. In response to the military judge, the accused stated that he did desire to exercise his rights in extenuation and mitigation.

The court-martial recessed at 1856, 2 Sept 2004.

The court-martial was called to order at 0902, 3 September 2004.

The sentence worksheet was marked as Appellate Exhibit CLXI.

The defense counsel offered Defense Exhibits F through Q for

identification without objection from the prosecution. Defense Exhibits F through Q for identification were admitted into evidence as Defense Exhibits F through Q.

The military judge and both sides discussed the instructions to be given to the members as to sentence.

The members reentered the courtroom.

The personal data of the accused from the charge sheet was published to the members.

The government had nothing to present in aggravation.

The defense presented its evidence in extenuation and mitigation.

Carlos Martinez, civilian, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Carlos Martinez. (b)(6)

Questions by the defense:

(b)(6)

The witness was handed Defense Exhibit H.

(b)(6)

Page removed under
(b)(6)

outstanding overall, this is what you're going to get.

CROSS-EXAMINATION

Questions by the prosecution:

(b)(6)

EXAMINATION BY THE COURT

Questions by the members as posed by the military judge:

(b)(6)

Major M. Pittman, U.S. Army, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is Major Pittman. I am a major in the United States Army Reserve. I work for 3d Corps out of Fort Hood.

Questions by the defense:

I am a member of the United States Army Reserve. I'm a transportation officer, logistics. I am currently stationed at a port city in Kuwait. I'm a the 3d Corps liaison officer. I basically work pre-deployment and deployment issues for 3d Corps out of Fort Hood, Texas.

(b)(6)

I am Sergeant Pittman's older brother. (b)(6)
Sergeant Pittman and I grew up in (b)(6)
parents have a total of (b)(6)

My

Defense Exhibit O is a document technical college. I am familiar with that school. My brother attend Denmark. He was a model student. He was in the Army National Guard. He played basketball for the college. He graduated from that college with a degree in

air-conditioning/refrigeration field.

After my brother finished his technical schooling, he joined the Marine Corps. He served in the first Gulf war. During the time that my brother and I grew up together, he was never in any trouble with the law. (b)(6)

(b)(6)

Prior to this court-martial, the last chance I got to see Sergeant Pittman was two years ago when my father passed away. He was at the funeral. People in the community think a lot about him.

My father was a World War II veteran. He was a cook in the Navy.

Right now, it is just myself and my brother in the military. I had four siblings that were in the service prior.

I am aware of what Sergeant Pittman has been convicted of by this court-martial. I believe he can pick up and continue with his life after this court-martial. He has a very high opinion of the military and the Marine Corps. He has a big respect for the military, especially the Marine Corps.

(b)(6) civilian, was called as a witness by the defense, was sworn, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the prosecution:

My name is (b)(6) I currently live in (b)(6)

Questions by the defense:

(b)(6)

I believe he returned from his last deployment August 2003. I am

(b)(6)

CROSS-EXAMINATION

Questions by the prosecution:

(b)(6)

Lieutenant Colonel (b)(6) USMC, was called as a witness by the defense, was reminded he was still under oath, and testified substantially as follows:

DIRECT EXAMINATION

Questions by the defense:

I have become aware of the findings with regard to Sergeant Pittman's case. I am familiar with the conviction of the one count of dereliction of duty and the assault charge.

Based on my observations that I have already testified to and taking into consideration what Sergeant Pittman has been convicted of, I think Sergeant Pittman is fully capable of being rehabilitated.

Based on my observations of Sergeant Pittman and my knowledge of

him, he wants to stay in the Marines.

The defense published all defense exhibits with the exception of Defense Exhibit P to the members.

The accused made an unsworn statement in substance as follows:

UNSWORN STATEMENT

(b)(6)

I graduated Middleton High School. I participated in basketball football, and track. I then went to Denmark Technical College in Denmark, South Carolina. Basketball for them. I received an AA degree.

I joined the South Carolina National Guard prior to going to college. I was an 11B, which is the same thing as an 0311. While I was in the national guard, I was also attending junior college.

After I left the national guard, I enlisted in the Marine Corps. I was an 0311 in the Marine Corps. I stayed in the Marine Corps four and a half years. I engaged in combat during Operation Dessert Storm while in the Marines.

At the end of the Gulf war, I got out of the Marine Corps. After I got out, I tried to get right back in. The recruiter told me no. So I enlisted in the Army. I didn't have to attend boot camp in the Army. While I was in the Army, I was attached to the 101st Airborne. While in the Army, I deployed over to Korea.

(b)(6)

One or two days after I got off active duty in the Army in '95, I went straight to the prior service recruiter. From '95 to 2000, I was seeing him every month trying to get back in. That's when I joined 2/25. I was activated for Operation Enduring Freedom at Camp Lejeune. I was activated again for Operation Iraqi Freedom.

In the course of my military career I was involved in Operation Just Cause in Panama. After I left there, I got sent straight on a MEF float for Operation Sharp Edge. We had to evacuate the American citizens from the embassy in 1990 in Liberia. After I got back from there, I spent a month in Lejeune and went straight to Operation Dessert Storm. When I went into the Army, they sent me up to the DMZ for a year. Then I deployment later for Operation Enduring Freedom and Operation Iraqi Freedom.

There is no feeling I can think of that can top when I graduated Marine Corps boot camp and marched across the parade deck. I felt like I was walking on clouds. It was just an awesome feeling.

Defense Exhibit P are photographs. The first picture is a Toys for Tots event for the orphanage in Iraq. I volunteered for it. We took them food, candy, and toys. This is a picture of me with the kids at the orphanage during Operation Iraqi Freedom.

The next photograph is a picture of me with a tour guide over in Iraq. He was telling me about the Abraham the prophet's house was in the background of the photo.

The next photo is of me and Sergeant (b)(6). We were delivering a bunch of care packages house to house for the kids. We were giving them candy and water. The next two pictures are more groups of kids we gave water, cookies, and candy to.

The next picture is a picture of me. We had the prisoner that we called Heavy D. He spoke really good English. Before he left, he kissed me on both sides of my cheeks. He said he would cook for me in two days. So the next two days, he brought rice, bread, and a whole cooked lamb. Me and the other Marines were tasting it. We didn't want to eat it because a lot of people were getting sick from eating that food. Heavy D returned with food after he left Camp Whitehorse.

There was a time that a young boy was brought in with a fractured jaw and other injuries. He couldn't eat when we fed him. So I got the apple sauce out of the care packages and the milk shake out of the MREs. Heavy D translated for me. So I basically fed him breakfast, lunch, and dinner like he was my kid. He was brought in by the capturing unit already injured.

I rate 21 ribbons, but I am only showing 20. I searched every PX but I couldn't find a 21-ribbon bar. The ribbon I am not displaying is the Korean Defense Service Ribbon.

(b)(6)

(b)(6)

I accept the court's findings. I desire to remain in the Marine Corps. The Marine Corps is just a part of me. It's in my blood.

Hopefully, I will remain in the Marine Corps and continue on with my civilian life. I apologize for the charge that I'm guilty of. If any means possible, I would love for a chance to make that up.

Defense Exhibit P was published to the members.

The defense had nothing further to present in extenuation and mitigation.

The government had nothing to present in rebuttal.

The government presented argument on sentencing.

The defense presented argument on sentencing.

The government presented closing argument on sentencing.

The military judge instructed the members on the maximum punishment which could be adjudged for the offense(s) of which the accused had been found guilty. The military judge also instructed the members concerning procedures for voting, the responsibilities of the members, and the matters the members should consider in accordance with R.C.M. 1005(e). The members were given Appellate Exhibit CLXI, a sentence worksheet. There were no objections to the instructions or requests for additional instructions.

The court-martial closed for deliberations on sentencing at 1252 on 3 September 2004.

The court-martial opened at 1430 on 3 September 2004.

All parties present when the court-martial closed for deliberations on sentencing were again present.

The President announced the following sentence:

To the reduction of the grade of E-1;
To perform hard labor without confinement
for 60 days;
To be restricted to the limits of your

barracks, place of worship, work, dining facility, fitness center, and barber shop for 60 days.

The members were excused and withdrew from the courtroom.

The military judge ascertained that the accused had read and discussed Appellate Exhibit CLXIV, his appellate rights, with his defense counsel. The military judge further ascertained that the accused understood his appellate rights and did not have any questions of the military judge.

The court-martial adjourned at 1437 on 3 September 2004.

[END OF PAGE]

AUTHENTICATION OF THE RECORD OF TRIAL

in the case of

Sergeant G. P. Pittman, (b)(6) U.S. Marine Corps,
Headquarters Battalion, 1st Marine Division, Camp Pendleton,
California 92055



R. S. CHESTER
Col, U.S. Marine Corps
Military Judge

16 Feb 05

I have examined the record of trial in the foregoing case.



L. J. FRANCIS
Maj, U.S. Marine Corps
Trial Counsel

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